HEARING

BEFORE THE COMMITTEE ON THE DISTRICT OF COLUMBIA
OF THE UNITED STATES SENATE

ON THE BILLS

S. 8655

TO REQUIRE THE WASHINGTON GASLIGHT COMPANY AND THE GEORGETOWN GASLIGHT COMPANY TO MAINTAIN AND RECORD A CERTAIN PRESSURE OF GAS

S. 18345

TO FIX THE PRICE OF GAS IN THE DISTRICT OF COLUMBIA

S. 18513

TO REPEAL SECTION 5 OF AN ACT ENTITLED "AN ACT RELATING TO THE SALE OF GAS IN THE DISTRICT OF COLUMBIA," APPROVED JUNE 6, 1896

H. R. 26398

REGULATING THE QUANTITY OF CARBON MONOXIDE IN GAS IN THE DISTRICT OF COLUMBIA

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

GAS IN THE DISTRICT OF COLUMBIA.

COMMITTEE ON THE DISTRICT OF COLUMBIA,
UNITED STATES SENATE,
Washington, D. C., February 5, 1909.

The committee met at 10 o'clock a. m.

Present: Senators Gallinger (chairman), Dillingham, Scott, Gamble, Burkett, Carter, Martin, Paynter, Johnston, Milton, and Smith.

Also Mr. Edward H. Thomas, corporation counsel, and R. H. Goldsborough, general counsel Washington Gaslight Company.

The CHAIRMAN. Mr. Goldsborough, I believe you represent the gas company as their attorney?

Mr. GOLDSBOROUGH. As general counsel.

The CHAIRMAN. Mr. Thomas, you are the corporation counsel?

Mr. THOMAS. Yes, sir.

The CHAIRMAN. And you are here at the suggestion of the commissioners?

Mr. THOMAS. Yes, sir; Commissioner Macfarland instructed me to come.

The CHAIRMAN. The suggestion has been made that it might be possible for this committee to consolidate in one bill the several propositions that are now before Congress, in the hope that we would get rid of this controversy over gas in the District of Columbia, in its various phases, for some time to come. I may say, in all frankness, that the chairman of the committee would be delighted to have that result reached, as it would make it tolerable for him to remain in the chairmanship of the committee, or for somebody else to remain here, with some degree of comfort. As it is now, we are subjected to all sorts of importunities and criticisms from various sources relating to this much-discussed and constantly agitated question of gas.

I have thought it might be well for us to hear this morning the views of the corporation counsel and also the views of Mr. Goldsborough, who represents the gas company, and see whether or not it is possible to harmonize them.

At this point I will take the liberty of incorporating into the record the four bills that are now before us for consideration—the two House bills and the two Senate bills.

(The bills referred to are as follows:)

[S. 8655, Sixtieth Congress, second session.]

A BILL To require the Washington Gaslight Company and the Georgetown Gaslight Company to maintain and record a certain pressure of gas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Washington Gaslight Company and the Georgetown Gaslight Company, their successors and assigns, shall whenever necessary, by enlargement of works and mains, or otherwise, secure such pressure of gas at the several works

or principal centers of distribution, and at each point of initial pressure, that there shall be maintained and recorded at stations to be fixed by the Commissioners of the District of Columbia, as public needs in their judgment may require, at all times such a gas pressure that the pressure at each consumer's meter shall at least be equivalent to that required to support a column of water one inch in height: *Provided*, That it shall be the duty of each of said companies to erect, furnish, and pay for the devices and contrivances for recording such pressure of gas as aforesaid.

SEC. 2. That each and every violation of any of the provisions of this act by the said companies, or either of them, or any of their officers or agents, shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars: *Provided*, That prosecutions under this act for every such violation shall be in the name of the District of Columbia in the police court of said District on information filed by the corporation counsel or any of his assistants.

[H. R. 18345, Sixtieth Congress, second session.]

AN ACT To fix the price of gas in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after January first, nineteen hundred and nine, no person, firm, copartnership, association, or corporation engaged in the manufacture and sale of fuel or illuminating gas in the District of Columbia shall sell or otherwise dispose of the same to any person, firm, copartnership, association, or corporation in the District of Columbia for a price exceeding eighty-five cents per thousand cubic feet, such gas to be of the standard and quality required at the present time.

Passed the House of Representatives December 14, 1908.

Attest:

A. MCDOWELL, *Clerk*.

[H. R. 18513, Sixtieth Congress, second session.]

AN ACT To repeal section five of an act entitled "An act relating to the sale of gas in the District of Columbia," approved June sixth, eighteen hundred and ninety-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section five of an act entitled "An act relating to the sale of gas in the District of Columbia," approved June sixth, eighteen hundred and ninety-six, and all remedies therein provided, be, and the same are hereby, repealed, and all pending proceedings thereunder shall be vacated, and no judgment, decree, finding, permit, or valuation of any kind mentioned or intended to be mentioned in said section shall be made or ascertained.

Passed the House of Representatives December 14, 1908.

Attest:

A. MCDOWELL, *Clerk*.

[H. R. 26398, Sixtieth Congress, second session.]

A BILL Regulating the quantity of carbon monoxide in gas in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter neither the Washington Gaslight Company, the Georgetown Gaslight Company, their successors or assigns, nor any other company or corporation shall manufacture, make, sell, or supply any gas for heating or illuminating purposes in the District of Columbia which shall contain an excess of ten per centum of carbon monoxide.

SEC. 2. That the inspector of gas and meters, under rules and regulations to be made, changed, and amended from time to time by the Commissioners of the District of Columbia respecting his duties under this act, and all other duties of said inspector, shall from time to time inspect, examine, and analyze the gas manufactured, made, sold, or supplied for heating and illuminating purposes in said District and report to the Commissioners of the District of Columbia any violation of any of the provisions of this act.

SEC. 3. That each and every violation of any of the provisions of this act by any person or corporation shall, on conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and, in addition to such fine, the person, officer, or agent of the company or corporation responsible for such violation may, on conviction, in the discretion of the court, be punished by imprisonment not exceeding six months: *Provided*, That each and every day during which said violation shall continue shall constitute a separate offense: *And provided further*, That prosecutions under this act shall be in the name of the District of Columbia in the police court of said District on information by the corporation counsel or any of his assistants.

Senator BURKETT. Mr. Chairman, with reference to the monoxide controversy that has been going on in the newspapers, I wonder if there is someone who is working that thing out and gathering information and matters to present here to us in concrete form.

Senator LONG. No; we have been waiting on the investigation that has been proceeding before the House committee on that proposition. The House has given a great deal of attention to it. The investigation is in progress now. It was halted somewhat because they could not get certain persons before them. The House last evening gave authority to the committee to summon witnesses and send for persons and papers, and that investigation will be continued on the technical questions. The subcommittee of this committee has not thought it wise to carry on any proceedings or investigation similar to the one being conducted by the House committee until that is concluded. We hope to have the advantage of their investigations and conclusions on that proposition.

STATEMENT OF MR. E. H. THOMAS, CORPORATION COUNSEL.

The CHAIRMAN. Mr. Thomas, will you make a statement?

Mr. THOMAS. Senator, I would like to inquire on what point I am expected to make a statement.

The CHAIRMAN. Mr. Thomas, I do not know that I can give you any suggestion of value on that point. We have these bills here, and some of us have hoped that we might reach a conclusion, as I stated a moment ago, that will enable us to get rid of this entire controversy at this session of Congress. You can address yourself to the question whether or not you think the House bill reducing the price to 85 cents a reasonable bill, or whether it ought to be at some other figure; whether or not you think it desirable to repeal the statute of 1896, which gave the gas companies authority to have their plant valued by the courts, and which matter is now on appeal before the Supreme Court of the United States. You can state to the committee what you think about the monoxide question, and about the matter of the pressure of gas, which I think is embodied in a bill that came from your office.

Mr. THOMAS. Yes, sir.

Senator JOHNSTON. What is this case on appeal to the Supreme Court that you refer to, Mr. Chairman?

The CHAIRMAN. It involves a section in the act of 1896, which gave the gas companies the right to go to court to ascertain the value of the plants.

Senator JOHNSTON. The House has passed a bill repealing that provision?

The CHAIRMAN. The House has repealed that provision.

Senator LONG. The supreme court of the District of Columbia were proceeding under that section when the writ of prohibition was issued by the court of appeals of the District of Columbia. In that case the court of appeals of the District of Columbia decided that section 5 was unconstitutional, and that case has been appealed to the Supreme Court.

The CHAIRMAN. Mr. Thomas, you may proceed along the line I have suggested, and give the committee such information as you think will aid us in considering these questions.

Mr. THOMAS. In the first place, Mr. Chairman, I desire to say that Commissioner Macfarland has instructed me to say to the committee that while he did suggest that all these bills be consolidated, he is now of opinion that it is too late in the session to consolidate the carbon monoxide and gas pressure bills with the other bills.

In reference to the price of gas, 85 cents, I have no information upon the subject. I never made any investigation of that subject and I do not know anything about it. I do know, however, about the case under the act of 1896.

There are two gas companies in the District of Columbia, one, the Georgetown Gaslight Company, operating west of Rock Creek, using, as I understand it, a coal-gas plant, and the other operating east of Rock Creek, the Washington Gaslight Company, operating, as I understand it, a plant of mixed water gas and coal.

Congress passed a law, I think dated June 6, 1896, the fifth section of which reads as follows:

That neither the Washington Gaslight Company nor the Georgetown Gaslight Company shall hereafter issue any greater number of shares of stock than shall be equal to the actual cash value of such plants and necessary cost of construction of future extensions or future enlargement of the plants, which cash value and cost of extension shall first be ascertained and authorized upon petition therefor to the supreme court of the District of Columbia under such regulations as the chief justice and the justices thereof shall prescribe; also, if either of the said corporations shall desire hereafter to issue bonds upon their property, secured by mortgage or otherwise, upon petition therefor to said court, setting forth the necessity thereof and the amount of stock issued and outstanding, it may and shall be lawful for said court, or the chief justice or justices thereof, as the case may be, or one of them, upon public notice, to be prescribed by the rules of said court, to permit the issuance of such bonds and mortgage as desired: *Provided*, That the amount of stock and bonds issued shall not exceed the actual cash value of said plant and the cost of such extensions or enlargement of said plants: *And provided further*, That the Washington Gaslight Company is hereby authorized to issue such additional amount of capital stock as will provide for the conversion into such stock of its outstanding certificates of indebtedness, which conversion of said certificates is hereby authorized to an amount not exceeding $600,000.

The stock of the Washington Gaslight Company is set forth in its petition for the ascertainment of the actual cash value of its plant, etc. Equity No. 27445, supreme court of the District of Columbia. It is probably not necessary to read that.

The CHAIRMAN. You may incorporate it.

(The statement referred to is as follows:)

[Filed June 24, 1907.—Filed November 5, 1907.—J. R. Young, clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. No. 27445. EQUITY.

IN RE PETITION OF THE WASHINGTON GASLIGHT COMPANY FOR THE ASCERTAINMENT OF THE ACTUAL CASH VALUE OF ITS PLANT AND NECESSARY COST OF THE CONSTRUCTION OF FUTURE EXTENSIONS OR ENLARGEMENTS OF SAME AND FOR FURTHER RELIEF.

To the Supreme Court of the District of Columbia:

The petition of the Washington Gaslight Company respectfully showeth unto the court as follows:

1. That it is a corporation organized and existing under and by virtue of an act of Congress of the United States entitled "An act to incorporate the Washington Gaslight Company," approved July 8, 1848.

2. That its corporate name is "Washington Gaslight Company," and that it is now carrying on and has for many years past carried on its business within the said District.

3. That its said business is manufacturing, making, and selling gas to be used in that portion of the District of Columbia lying east of Rock Creek, for the purposes of lighting the city of Washington, District aforesaid, and the streets thereof, and any buildings, manufactories, or houses contained in said city, and also in said portion of said District lying east of Rock Creek, including roads in that portion of said District.

4. That by section 2 of the aforesaid act it was provided that the capital stock of said corporation should not exceed $50,000 and that a share in the same should be $20, face value; and that accordingly the said corporation was organized with a capital of $50,000, divided into 2,500 shares of $20 each, face value.

5. That by act of Congress entitled "An act to amend an act to incorporate the Washington Gaslight Company, approved July 8, 1848," which amendatory act was approved August 2, 1852, the said capital stock was increased to the sum of $350,000.

6. That by act of Congress entitled "An act authorizing the Washington Gaslight Company to increase the capital stock of said company," approved January 3, 1855, the said capital stock was increased by the sum of $150,000.

7. That by act of Congress entitled "An act to amend the charter of the Washington Gaslight Company," approved May 24, 1866, the said capital stock was further increased by the sum of $500,000.

8. That by act of Congress entitled "An act to increase the capital stock and to extend the works of the Washington Gaslight Company," approved May 29, 1872, and by proper action of the said petitioner authorized by said last-named act, the said capital stock was increased by the sum of $1,000,000.

9. That by virtue of section 5 of an act of Congress entitled "An act relating to the sale of gas in the District of Columbia," approved June 6, 1896, the said capital stock was further increased by the sum of $600,000.

10. That at the date of the filing of this petition and long prior thereto the total amount of said capital stock issued and outstanding is and was, as aforesaid, $2,600,000, divided into 150,000 shares of the par value of $20 each.

11. That your petitioner has outstanding, issued under authority of law, and payable partly in the year 1927 and partly in the year 1929, $600,000, face value, of bonds which originally bore interest at the rate of 6 per cent per annum, but which rate has been, by valid agreement with the holders of said bonds, reduced to 4 per cent per annum.

12. That your petitioner also has outstanding certificates of indebtedness amounting to $2,600,000, face value, issued in the year 1893, bearing interest at the rate of 6 per cent per annum, and payable twenty years after date, with the option on the part of your petitioner to anticipate said payment at any time subsequent to five years after said date.

13. That in addition to the said indebtedness your petitioner owes a floating indebtedness not exceeding the sum of $30,000.

14. That the needs of your petitioner's business require that in the immediate future it shall construct extensions or enlargements of its said plant, by adding thereto gas holders, by extending its works at the east station, and by laying such additional mains as will meet the requirements of the District Commissioners and the necessity of the company's business at a necessary cost of at least $650,000.

15. That the actual cash value of the plant owned by the petitioner and used by it in the manufacture and distribution of gas in accordance with the provisions of the aforesaid acts of Congress is largely in excess of the aforesaid capitalization of $2,600,000.

16. That by virtue of section 5 of an act of Congress entitled "An act relating to the sale of gas in the District of Columbia," approved June 6, 1896, your petitioner is authorized and empowered to issue additional shares of stock for the purpose of increasing its capitalization beyond the aforesaid amount of $2,600,000, provided that the amount of new stock so to be issued shall not exceed the actual cash value of the said plant and the necessary cost of future extensions or enlargements of said plant, and provided further that such cash value and necessary cost of future extensions or enlargements shall first be ascertained and authorized upon petition therefor to the supreme court of the District of Columbia, under such regulations as the chief justice and justices therefor shall prescribe.

17. That your petitioner desires to avail itself of the authority granted to it by the aforesaid act, and in pursuance thereof to now issue such additional number of shares of stock of the par value of $20 each as in the aggregate, together with the present outstanding issue of $2,600,000, shall not exceed the total value of its said plant and future extensions and enlargements thereof.

18. That in order to provide for the necessary cost of the said future extensions or enlargements hereinbefore referred to in paragraph 14 of this petition, your petitioner desires to issue such additional number of shares, beyond the amount representing

the aforesaid actual cash value of its plant, as shall be sufficient to defray the necessary cost of said proposed future extensions and enlargements specified in said paragraph 14.

Wherefore, the premises considered, your petitioner prays:

First. That this honorable court will forthwith, in accordance with the regulations in the premises heretofore prescribed by the chief justice and justices of this court, fix a time for the initial hearing of this petition, and that thereupon the clerk of this court shall cause notice of said time and place to be duly published, and copies thereof served, as is provided by rule 2 of the aforesaid regulations as to procedure in the premises heretofore prescribed by this honorable court.

Second. That this honorable court will take such further steps, under the aforesaid regulations, as shall be necessary for the ascertainment by this court of the actual cash value of your petitioner's said plant, and, such actual cash value having been so ascertained, authorized, and adjudged, will thereupon authorize the issue by your petitioner of such additional number of shares of its capital stock, of the par value of $20 each, as shall, together with the $2,600,000 of capital stock now outstanding, be equal in the aggregate to such ascertained actual cash value.

Third. That the court will further ascertain, under said rules of procedure, the necessary cost of the future extensions and enlargements of your petitioner's said plant specified in paragraph numbered 14 of this petition, and will further authorize the issue by your petitioner of such additional shares of stock, of the par value of $20 each, as will enable your petitioner, from the sale thereof, to defray the necessary cost of such future extensions and enlargements of its said plant.

Fourth. That your petitioner may have such other and further relief in the premises as the nature of its case may require, and as to the court shall seem meet and proper.

WASHINGTON GASLIGHT COMPANY,
By JOHN R. MCLEAN, *President.*

R. ROSS PERRY & SON,
R. H. GOLDSBOROUGH,
LAMBERT & MCLEAN,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, John R. McLean, having been first duly sworn, on oath, depose say, that I am the president of the Washington Gaslight Company, and as such am authorized to sign the foregoing petition and to make this affidavit; that I have read the foregoing and annexed petition by me subscribed on behalf of said company, and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

JOHN R. MCLEAN, *President.*

Subscribed and sworn to before me this 5th day of November, A. D. 1907.

[SEAL.] A. B. KELLY, *Notary Public.*

A true copy.
Test.
(Seal supreme court of the District of Columbia.)

J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM, *Assistant Clerk.*

R. ROSS PERRY & SON,
R. H. GOLDSBOROUGH,
LAMBERT & MCLEAN,
Solicitors for petitioner.

Senator PAYNTER. That relates to the capital stock?

Mr. THOMAS. Of the Washington Gaslight Company; yes, sir. The Georgetown company has a much less amount of stock.

Senator JOHNSTON. Two million six hundred thousand dollars worth of stock, and outstanding certificates of indebtedness of the same amount, bearing 6 per cent interest—practically $5,200,000.

Senator SMITH. The increase is in bonds, is it not?

Mr. THOMAS. No, sir. Here is what they say:

That at the date of the filing of this petition, and long prior thereto, the total amount of said capital stock issued and outstanding is and was, as aforesaid, $2,600,000, divided into 130,000 shares of the par value of $20 each.

That your petitioner has outstanding, issued under authority of law and payable partly in the year 1927 and partly in the year 1929, $600,000, face value, of bonds, which originally bore interest at the rate of 6 per cent per annum, but which rate has been, by valid agreement with the holders of said bonds, reduced to 4 per cent per annum.

That your petitioner also has outstanding certificates of indebtedness amounting to $2,600,000, face value, issued in the year 1893, bearing interest at the rate of 6 per cent per annum, and payable twenty years after date, with the option on the part of your petitioner to anticipate said payments at any time subsequent to five years after said date.

The Georgetown Gaslight Company was incorporated on July 20, 1854, at a capital stock of $150,000, the shares being of the par value of $25 each.

Senator LONG. What is the amount of its certificates of indebtedness and bonded indebtedness?

Mr. THOMAS. I do not think it has any bonded indebtedness. I think it has about $60,000 of indebtedness outstanding, but Mr. Goldsborough is better informed about that than I am. The report of the auditor in the Georgetown Gaslight Company's case states the facts. This report can be furnished.

(The report is as follows:)

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

IN RE THE PETITION OF THE GEORGETOWN GASLIGHT COMPANY FOR AUTHORITY TO INCREASE ITS CAPITAL STOCK. EQUITY No. 27187.

The petitioner was incorporated under an act of Congress approved July 20, 1854, and contained in Tenth Statutes at Large, page 786. The second section of the act provided that the capital stock of the corporation should exceed $150,000 and that each share of such stock should be of the par value of $25.

The seventh section provided that the president and directors should have full power and authority to manufacture, make, and sell gas to be used for the purpose of lighting the city of Georgetown or the streets thereof and any buildings manufactories or houses therein contained or situate; and to lay pipes for the purpose of conducting gas in any of the streets, lanes or alleys of the said city.

The ninth section provides that nothing in this act shall be construed to prevent any person or persons or any incorporated company hereafter to be created by Congress for that purpose, from engaging in or pursuing the business specified in the seventh section of the act, and that it shall be lawful for Congress at any time hereafter to alter, amend, or repeal this act.

The eleventh section provides that the stockholders shall be liable in their individual capacity for all debts and liabilities of the said company.

In 1896 Congress passed an act, which was approved on the 6th of June of that year and is contained in the Twenty-ninth Statutes at Large, page 251. The first four sections of this act relate to the rate to be charged by the Washington Gaslight Company and the Georgetown Gaslight Company for the consumption of gas and the conditions of quality of the said gas; also providing for the inspection of the gas and meters.

Section 5 provides that neither the Washington Gaslight Company nor the Georgetown Gaslight Company should thereafter issue any greater number of shares of stock than shall be equal to the actual cash value of their plants and the necessary cost of the construction of future extensions or future enlargement of plants, said value and cost of extensions to be ascertained upon petition to this court, etc.

The same section repeats in the form of a proviso the restriction that the amount of stock and bonds issued shall not exceed the actual cash value of the plants and cost of extensions, etc.

The petition filed by the said company sets forth its existence, capital stock, number of shares, the issue of the same, and full payment therefor; that it has issued no bonds, and that its total floating indebtedness amounts to not exceeding $60,000. Referring to the act of Congress of June 6, 1896, the petition sets forth that the petitioner desires to avail itself of the authority granted by the aforesaid act and to now issue such additional number of shares of stock, not to exceed 6,000, of the par value of $25 each, as in the aggregate, together with the present outstanding stock, will not

exceed the total actual cash value of its said plants and extensions and enlargements thereof.

The District of Columbia and the United States, being as provided in the act of Congress, made parties to the said petition, answered without definitely traversing either of the averments of the petition and indicating that they would have no evidence to present to the court in the proceeding.

After the pleadings were in, the court proceeded with the necessary publications and other steps prescribed by the act of Congress, and on the 29th of July, 1907, passed the following order: "That the said cause be, and the same hereby is, referred to James G. Payne, esq., the auditor of this court, with instructions to take such competent testimony therein as shall be adduced before him by either the said petitioner, or by the United States, or by the District of Columbia, through their respective aforesaid attorneys, touching the actual cash value of the plant of the petitioner and the necessary cost of the construction of future extensions or future enlargements of said plant and that the said auditor report the said testimony to the court, together with his findings touching the actual cash value of the said plant and the necessary cost of the construction of future extensions or future enlargements of said plant."

After due notice to counsel representing the respective parties, petitioner and respondents, I proceeded with the reference, Mr. R. Ross Perry, Mr. R. H. Goldsborough, and Mr. G. Thomas Dunlop, appearing for the petitioner, Mr. E. H. Thomas, corporation counsel for the District, and Mr. Stuart McNamara, assistant district attorney, for the United States.

The counsel for the petitioner submitted evidence in the form of maps, records, and testimony of witnesses tending to show the character and extent of the property and possessions of the company and the cost of reproduction and reestablishment of its plant, property, and business at the present time. This evidence was directed to the following alleged elements of value.

Land: Owned and used by the petitioner in connection with its operations.

Buildings: Containing the machinery, holders and other fixtures used in the manufacture of the company's product.

Street mains: Being pipes of different sizes laid in the streets for conducting the gas to the consumers.

Services: Consisting of small pipes leading from the mains into the property of the consumer.

Meters: Placed in or upon the consumer's premises for the purpose of measuring the consumption of gas.

Working capital.

Franchises and good will.

Evidence was also introduced by experts tending to show the total value, first as a going concern and in the alternative as shown by capitalizing its net earnings at the rate of 5 per cent.

Counsel for the District of Columbia then made a call upon the petitioner as follows:

Please produce:

1. The minutes of the board of directors and stockholders of the Georgetown Gaslight Company covering the period between June 24, 1902, and July 31, 1907.
2. The by-laws of said company.
3. The current stock books or stock ledger of said company.
4. Statement showing how much of the original capital stock of $150,000 was actually paid in in cash or property, and by whom and when.
5. Balance sheets or inventories of the company's property and condition, which are in the possession of the company, during the company's existence.
6. A statement of the earnings of the company, gross and net, for the ten years last past.
7. Statement of the dividends and when paid and amounts during the said period.
8. Statement of the operating expenses of said company and amount of gas manufactured and sold during said period.
9. And the present directors of the said company and their residences.

This call being submitted to me and argued by counsel the following order was made:

The motion of counsel for the respondents for a rule on the petitioner requiring the production of the minutes of the board of directors and stockholders, the by-laws of the company, current stock books or stock ledger together with a statement showing what portion of the original capital was paid in, how, by whom, and when; balance sheets or inventories of the company's property and conditions during the company's existence, a statement of the earnings of the company, gross and net, for the last ten years, of the dividends and when paid and amounts during the said period, and of the operating expenses of the company and amount of gas manufactured and sold during the said period, and the present directors of the company and their residences.

After hearing counsel in argument it is ordered that the petitioner furnish a statement showing the original cost to it of the plant and property of the company, including separately the original plant and the additions, extensions, and improvements thereto.

Also a statement of the gross earnings of the petitioner, together with the charges, operating expenses, and other expenditures during the five years preceding the filing of the petition in this proceeding, the said statement to show the net earnings by yearly periods.

It is further ordered that in all other respects the said motion of the respondents be and the same is denied.

Mr. Thomas excepts to the refusal to require the petitioner to show what dividends have been paid in and also to the refusal of the auditor to require the production of the minutes of the board of directors and stockholders.

Upon examination of some of the numerous cases to be found in the federal and state reports which in some form involve the ascertainment of the value of the plant, property, and possessions of a corporation, I find that evidence of the original cost of the acquirement and construction of the company's plant or property and establishment of its business has been generally required by the court and furnished by the corporation as an element of value, though not conclusive, but to be considered in connection with proof of the cost of reproduction or reestablishment.

The petitioner then produced the following statements:

A summary account purporting to show the moneys expended under the head of construction account, including the cost of land, construction of buildings, machinery, apparatus, mains, services, and meters and stating the aggregate separately in yearly periods, together with the total from the date of beginning to the 7th of September, 1907, the total amounting to $353,568.39.

A second statement, entitled "Construction account," covering the same period and purporting to show in detail the yearly current expenditures for the purposes summarized in the first-named account.

A third statement purports to show the expenditures by the company on account of the extension of its mains from July, 1893, to September 7, 1907. This statement is in detail and sets forth the items of expenditure separately for each year during that period, the total being $45,577.19.

Another statement purports to show the earnings and expenses of the company, itemized in yearly periods, from 1902 to 1906, both inclusive, and for the succeeding period to June 30, 1907.

Three of these statements, first, second, and third, are useful in showing the actual cost of the construction of the plant and other property, including the buildings, mains, services, meters, lamp-posts, and connections.

They are also useful in illustrating the methods followed by this company in the organization and establishment of its plant and business. The evidence so furnished will be found relevant in treating of the opinions and estimates of the expert witnesses.

It will be convenient to consider at this point an issue made by counsel for the District in argument and indicated in the cross-examination of the witnesses produced and testifying on behalf of the petitioner.

This issue relates to the proper interpretation of the term "plant" as used in the act of Congress and in the order of reference. On behalf of the District it is contended that the term should be strictly construed and limited to include only the apparatus used in the manufacture of the company's product and the buildings in which such apparatus is contained. This theory would exclude from consideration as elements of value the land owned and used by the company in connection with its business, as well as the mains or pipes through which the gas is carried to the consumer, and other physical or tangible property. This contention is not without support in the history of litigation which involves property of corporations and its value for any purpose of judicial determination. The numerous cases dealing with this subject to be found in the Federal and State Reports are either cases of taking the property by eminent domain or for establishing the rate of reasonable compensation for its use by the public. In these cases the term "plant" is treated as a subdivision of property, and this is illustrated in the Report of the Special Laster in the case of the Consolidated Gas Company of New York against the Attorney-General and others, in which the capital and assets of the complainant are made up in separate classes of real estate, plant, mains, services, meters, office fixtures and furniture, working capital, franchises, and rights.

The term "plant," as defined by the authors of dictionaries, includes fixtures, machinery, tools, apparatus, and appliances necessary to carry on a mechanical trade or business or a mechanical operation or process.

The important question, it seems to me, and one which must determine the scope and meaning to be given the term in the present case is the intent or purpose of the

legislature in the use of the term. Referring to the said section of the act generally, counsel for the petitioner attributes to Congress the purpose of obviating the necessity of frequent applications to that body by the two corporations for authority to increase their capital stock as from time to time they might desire. This, undoubtedly, was a general purpose of Congress with a view to its own relief as well as that of the corporations, but it fails to account for the restrictive proviso, and the question remains as to the purpose of Congress in its enactment. I find a purpose which is consistent with all of the provisions of the act and which is equally consistent with a desire on the part of Congress to benefit the public, and particularly that part of the public for which it was then legislating. I mean the purpose of affording protection to the public or individuals dealing in or with the stock of the corporation by establishing, underlying such stock, security in the form of property physical or tangible possessions of value equal to the par value of the stock issued. If this be accepted as the purpose of Congress, it seems unreasonable to attribute to that body an intention to exclude, as an element of security, the land to which the buildings and machinery are affixed and which gives to them the permanence and stability of freehold property. So also, as to the gas holders, which are affixed to the land and the mains which are firmly planted in the soil and constitute the machinery or conduits connecting the manufacture of gas with the point of use. The mechanical processes of the company are not complete until the product is delivered within reach of the consumer.

Therefore, I hold it to be the intent of the legislature to use the term plant, as it appears in this act, in its broader sense and as synonymous with property of a tangible nature.

Adopting this as the controlling theory of this report, I shall include in my findings as elements of value the physical and tangible property of the petitioning company, as the possession of such property is established in the proof.

REAL ESTATE.

After organizing under its original charter, the petitioning company purchased land and commenced the organization and construction of its plant. From time to time thereafter additional holdings of land were acquired, and at the time of filing the petition the company was the owner in fee simple of land in that part of Georgetown known as square 1196, consisting of lots 186, 188, 190, and parts of lots 4 and 42, all fronting 216 feet on Thirtieth street; also the south 35 feet of lot 187 and all of lots 189, 28, 29, and 30 in the same square, these lots and part of lot fronting 222 feet on Twenty-ninth street. All of this land is in immediate use by the company, being occupied by its buildings containing apparatus, machinery, gas holders, also for storage of material, and otherwise constituting a part of the manufacturing plant.

The company at the date mentioned was also, and is still, the owner in fee simple of lots 19 and 27 in the present square 1195, in Georgetown, having a frontage of 19 feet on Twenty-ninth street and 45.50 feet on Twenty-eighth street. This land is used for the storage of pipe and of oxide for the purification of gas.

The land in both squares has canal frontage, which is of substantial advantage to the business of the company in receiving material used in the manufacture of its product by water transportation, the rate of such transportation being less than by rail, and the convenience of delivery much greater.

Two witnesses, Mr. Jesse Wilson and Mr. Joseph H. Bradley, both being fully qualified as experts, were produced and testified as to the value of these separate parcels of land. The estimate of Mr. Wilson placed the value at from 65 to 70 cents per square foot, dealing with the land as business property. Mr. Bradley estimated the land as worth from 75 to 80 cents per square foot. Two other witnesses in behalf of the petitioner, Mr. Randolph, whose business is that of an electrical engineer, and Mr. Hillor, of Baltimore, whose business is of the same character, testified their respective opinions of the value of this land, but both being nonresidents of the District and having neither personal knowledge nor experience of the conditions or values of local real estate, are not qualified to testify on the point of value. I consider the opinion of Mr. Wilson as the most conservative and best informed, and in view of Mr. Bradley's larger estimate, I have adopted the highest rate given by Mr. Wilson.

Description and my finding of values are set forth in Schedule A herewith.

BUILDINGS.

Two witnesses were examined with reference to the value of the buildings exclusive of the land: Mr. Miller, electrical engineer, and Charles A. Langley, a general contractor and builder, who has been operating in that line of business in this District for more than a quarter of a century, and who testified after a thorough examination of the property.

I find Mr. Langley, by reason of his local experience, to be the best equipped as an expert witness on this point, and I adopt his estimate of values, which I have tabulated in Schedule B herewith.

The testimony of Mr. Langley deals with these valuations upon the basis of the cost of reproduction at the time of testifying. In connection with his testimony on the point of possible depreciation or difference between the use of new material and that constituting these structures, the witness fixed the possible difference or depreciation at from 5 to 10 per cent, hardly 10 per cent, and states that in his opinion 5 per cent would make the necessary repairs. I have therefore noted such deduction from his aggregate valued at the rate of 5 per cent.

Mr. Randolph testified to the existence and value of certain retaining and other walls and fencing which Mr. Langley does not include. I have added these in the said Schedule B.

APPARATUS.

Under the head of apparatus both Mr. Randolph and Mr. Miller take up the several parts, and the former especially, described the use of each, with an estimate of the cost of its reproduction in place and efficiency to perform its function in the work of manufacture and distribution. With the exception of horses, wagons, and office fixtures, the list furnished is made up exclusively of machines, instruments, fixtures, and tools necessary for the operations of the company.

In Schedule C herewith I have enumerated these in detail, giving a brief description, together with the estimate of Mr. Randolph of the cost of reproduction in their present condition, which estimate I adopt for the purpose of these findings.

Each of the said witnesses adds to his valuation an item of 15 per cent of the cost of reproduction, based upon his assumption that the construction of this portion of the plant will require the service of skilled engineering, and that a period of about two years would be necessary for the completion of the work, during which time the party investing in the construction would either have to borrow money for that purpose, and pay interest for its use, or would be deprived of income upon the investment or money expended. The item of 15 per cent, according to the witnesses, is made up of 7½ per cent as the cost of engineering, and 7½ per cent as for loss or payment of interest.

These witnesses by their profession and experience are competent to judge of the skill and time required for the reestablishment of the machinery and apparatus, and their opinions on this point are not controverted by other testimony. The force of this evidence, however, is weakened by a want of discrimination on the part of the witnesses, between such elements of cost as seem proper subjects of this charge and those to which it can not in any sense be applied.

Treating this item generally as it appears in this and other portions of the alleged elements of cost, the rate fixed by the witnesses appears to be excessive. Funds are only needed as the work progresses, and the conditions of progress are fairly well illustrated in the transcript of accounts presented by the petitioner in this reference. Judging from these, it is fair to assume that the average of time covered by the construction and completion of the plant would be one year, for which an allowance of 5 per cent for payment or loss of interest would be fair and reasonable.

As to the cost of engineering, the necessity for which, or at least its extent, is altogether contingent, it appears in proof offered by the petitioner that the District government, which expends large amounts for the construction and establishment of a waterworks system, including the same character of labor and material generally as that required for the establishment of a gas company's plant, allows in its estimate of cost 5 per cent for engineering, and I adopt that rate as coming nearer the probable cost than the estimates of Mr. Randolph or Mr. Miller.

STREET MAINS.

This system of mains is constructed of metal pipes, starting from the manufactory and continuing through the several streets and highways of the territory occupied and supplied by the company for the purpose of distributing the product of manufacture to the several points of consumption. These pipes vary in size from 3 to 12 inches in diameter. Mr. Randolph, whose evidence throughout I adopt as being the most reliable of the several witnesses who have testified, gives the result of his careful examination of this system, both in the measurement of its extent and in the difference of size. The location and extent of the pipes is also established by various maps of the District, which were produced and offered in evidence on this point. I have set forth in Schedule D herewith and in detail the measurement and value of the several sizes of these mains separately, adding to this the cost of opening

the pavements and replacing the same, this cost being controlled by the various kinds of material of which the said pavements are made.

Mr. Randolph also adds the items of interest and engineering at the rate of 15 per cent to the aggregate cost or value of the establishment of these mains, and based upon the reasons hereinbefore stated, I add the item at the rate of 10 per cent.

The petitioner furnishes gas for municipal use in the lighting of streets and highways, etc., and for that purpose has established a number of street-lamp service connections in which the lamps and posts are owned by the District. These special services are 595 in number and the cost of their construction and connection appears, from the evidence furnished, to be $10 each.

I have included these in Schedule D. The company also owns 225 lamp-posts, the cost or value of which is established at $7 each, and this item is also included in the said Schedule D.

CONSUMERS' METERS.

This item is presented by the petitioner under the head of "Meters and connections," and, in respect of the latter term, it is necessary to explain that by the word "connections" is meant a short lead pipe which connects the meter on one side with the wrought-iron service pipe which comes in from the street, and on the other to the wrought-iron house-pipe system, the latter being a distributive machine in the house to the various lights or burners. These meters are of different classes and distinguished by the number of lights which are intended to be used, which also controls their size. They are the instruments of measurement of the consumption of gas. The company owns 2,182 of these meters of different sizes and values, based upon the number of lights for which they are intended. Based upon the proof offered, I have in Schedule E enumerated the several sizes and their values, adding to the aggregate of such cost or value an item for inspection and meter shelf, 15 cents for each meter. The shelf is a part of the construction of the meter, both being the property of the company. The item of inspection is a charge of the government inspector, an office established by municipal law, and whose duty it is to inspect the meters before they will be accepted or approved.

The two expert witnesses, Randolph and Miller, add to their aggregate estimate of cost or value of these articles the item of interest and engineering. This is clearly an instance in which this charge is without foundation. The system of procuring and establishing in the consumer's property meters for use is fairly illustrated in the bookkeeping history of the petitioning company and seems to be the method that would be adopted by all similar corporations upon the basis of making expenditures as they are needed. Meters are not constructed by the company, but are purchased as they may be required for use. There is, therefore, no necessary burden of interest upon the money with which they are purchased or loss of its use, at least to any substantial extent, and it is clearly obvious that the work of placing these meters involves no necessity for engineering service.

CONSUMERS' SERVICES.

The petitioner presents among its claims of elements of value under the head of "consumer's services" the pipes leading from the mains in the streets or avenues to the meter located in the house or property of the consumer. These pipes are therefore located partly under the street and sidewalk and partly in or under the land and house of the property owner, part of the said connection being within the building. Mr. Randolph reports 2,025 of these services in use at the time of his examination, and 383 not appearing to be in use at that time, the latter condition arising from various causes, and the cost of these connections or services as estimated by these witnesses is $16 each. This is evidently an average assumed by the witness, inasmuch as these services vary materially in the extent of the pipe used, and thus affecting the cost of both material and labor in the installation of the services.

This alleged element of value presents a difficulty which does not attach to either of the other items already considered. It is shown by the books of the company that the owner of the property in every case has paid the cost of both labor and material incurred in the installation of the services and the only reason furnished in support of the claim of allowance of this item is the testimony of Mr. Randolph and another expert witness that it is the custom of gas companies to treat these services as their property, although not made at their cost. In support of their claims for allowance of the cost of these services the petitioner has established the fact that the Board of Assessors of the District of Columbia has recently and during the progress of this reference undertaken to assess them for the purpose of taxation as real estate owned

by the company. While this act, assuming that the board of assessors represent the Commissioners of the District, may estop the petitioner from hereafter contesting the validity of such assessment, and the District from denying the company's title, it should be remembered that the party directly interested is the property owner who has paid for the entire cost of labor and material employed in the construction and installation of the service. These property owners are not in court. They have had no opportunity to present their claims, and however the District may be estopped from denying the claim of the petitioner to ownership of these services it is without authority to admit away the rights of the individuals. The property owner is still left to assert his rights in the premises untrammeled by any bar in the nature of estoppal or by the admission of the District.

I am referred to the case of the District *v.* The Washington Gaslight Company, decided by the general term of this court in the case of 30 D. C., 39. This was an action brought by one Marietta Parker against the District of Columbia for damages for injury received by the plaintiff by reason of a certain open gas box placed and maintained in the sidewalk and street by the Gaslight Company for its own benefit, the plaintiff avering that the injury was caused by the failure of duty on the part of the District in permitting the said open gas box to exist in the said sidewalk or highway. The plaintiff recovered a verdict and judgment and a suit by the District against the company was for the recovery of the amount of the judgment. The court held that the gas boxes connected with the service pipes was a part of the apparatus of the company, and it being shown that the company had notice of the suit for damages with opportunity to intervene and defend, it was held liable to the plaintiff for the amount of the judgment paid by the latter.

In the opinion, the court said, "That notwithstanding the cost of making the lateral connection, including the gas box in question was paid by the lot owner that structure was put there by the defendant in the exercise of its own exclusive authority, and was, in contemplation of law a part of its own apparatus, and that it was the duty of the company to exercise a reasonable supervision of the gas box placed by it in the streets of Washington.

In that case, as in the one at bar, the property owner was not a party to the suit and had no opportunity to assert such right as he might have, and the judgment of the court would not be binding upon him, and the conditions of that case are so essentially different from those of this proceeding that the judgment has no application here.

Mr. Randolph undertakes to explain why these services should be treated as the property of the company, but he evidently has little confidence in his reasoning, as appears from his testimony (record, 69 and 70), from which I quote the following: "You may charge the consumer a bonus for connecting him up to your mains. That in part covers the cost of that service. That is just the first cost. But you have got to keep him supplied with a new service when the old service dies. You do not charge him another bonus for putting it back, but you keep him supplied with a new service, and for all practical purposes it is just as much the company's property, in my judgment, whether the consumer pays for it or whether he does not. If the consumer pays for it it is on his property, and the company can not touch it. If the company voluntarily goes to work and puts in a free service, that service is still on the consumer's property, and they can not touch it without his permission."

The suggestion of charging the consumer a bonus needs no answer. If it did, the company has given it in this proceeding by counting the number of its customers (consumers) as contributing to the alleged value of its good will as a going concern.

As to renewals, there is no proof to support the theory, and a comparison of the accounts furnished by the petitioner with the estimated aggregate cost of these services fails to indicate any expenditure for renewal of services.

The estimate of original cost is $38,576, while the amount expended by the petitioner in this respect is only $36,455.35.

This particular condition does not appear as the subject of definite judgment in any of the cases, Federal or State, which have been cited in argument or brief, or which I have been able to find. There is, however, a reference to it in the opinion of Mr. Justice Brewer in the case of the National Waterworks Company *v.* Kansas City (62 Fed. Rep., 862). In speaking (p. 865) of the value of the connections with the waterworks pipes in the streets as part of the established system enabling the company to earn its income, he dwells upon the value of an established business having what may be termed regular and permanent customers for the water supply by the company, and uses this language: "The fact that the company does not own the connections between the pipes in the streets and the buildings—such connections being the property of the individual property owners, etc." In a general way he includes these connections between the company and its customers as contributing

to what he terms the value of a living and going business, as compared with a dead structure, and not as an asset of ownership. Still speaking of the services, he says: "Such connections are not compulsory, but depend on the will of the property owner, and are secured only by efforts on the part of the owners of the waterworks and inducements held out therefor."

It is more than doubtful whether the cost or value of these services can be treated as security for either stock or indebtedness of the company, which does not own or claim to own one square foot of the land in which these pipes are laid. I find, therefore, that the said services can not be included as an element of value in the cost of reproduction of the plant.

WORKING CAPITAL.

This term is intended to represent the material and supplies of various kinds used in the manufacture of gas and its purification and other necessary processes. Some of these supplies are purchased in considerable quantities and kept on hand convenient for use when required, and one of the tracts of land owned by this company is entirely appropriated to this use.

Mr. Randolph in his testimony states that his estimate of the necessity of working capital to the extent of $30,000 is based upon the business of the company at the time of his examination and his acquaintance with the need of supplies and other costs.

I have therefore included in the elements of value which I find shall be allowed in making up the aggregate of this item of $30,000, treated as working capital. I may add in regard to this item that it appears to have been generally included in the reported cases involving the ascertainment of the value of corporation property as found in the reports.

FRANCHISE RIGHTS AND GOOD WILL.

Among the elements of value presented by the petitioner for allowance is an item entitled "franchise and good will as a going concern." Upon this point the witness, Mr. Randolph, estimates the total value of the concern at $600,000. His aggregate estimates of the physical or tangible property amounts to $468,522, leaving a difference of about $132,000, which he gives as the value of the franchise, rights, and good will.

On page 58 of the record he gives the basis of this valuation as being the fact that the company has a definite amount of business, a territory in which to develop that business, rights in that territory, a certain number of consumers already in use, that there are possibilities for a considerable increase in the number of these, and that the territory is rapidly growing, etc.

In further explanation of his estimates he states that during the year ending December 31, 1906, the total sales of gas by this company amounted to 70,133,000 feet; that the price of gas having been reduced, taking effect on the 1st of January, 1907, the consumption of gas would be increased or was increasing at the rate of about 20 per cent, and he assumed that during the present year the sale of gas by the company would amount to 85,000,000 feet, on which business the company would have a return of something in excess of $30,000 a year, and he proceeds to capitalize that upon a 5 per cent basis, which would bring the capital to $600,000.

Before analyzing this valuation and the manner of its computation it will be convenient to say a few words as to the right of the petitioner to have its franchise and good will included as an element of value under the restricted clause of the act of Congress. In all the reported cases of litigation in which the value of the property of the corporation is to be ascertained, including, as I have stated before, the taking of such property by eminent domain, or for the purpose of proposed purchase, or the establishment of a rate of reasonable return for the use by the public of the corporation property, the item of franchise and good will is the subject of allowance.

There are two essential differences between those cases and that under consideration—first, as to the purpose of the enactment, and second as to the use of the term "plant." The purpose of Congress, as I have interpreted the act, is to establish security as the basis of the issue of stock by the corporation, for the protection of the public. The use of the term "plant," which, in the litigated cases, is uniformly treated as having limited inclusion and rather as a subdivision of the term "property," is adopted by me in these findings as covering all the tangible property of the corporation. The question presented here is whether the intangible assets as franchise, rights, and good will, can also be included in the ascertainment of values. It may forcibly be urged that Congress had some purposes in the selection of the term "plant" instead of the more comprehensive term "property," but as these elements of rights and good will are uniformly treated as property, I am of the opinion and so find that the petitioner is entitled to have their values included in the term used in the act of Congress, "actual cash value of the plant."

It may be noted that in the present case the franchise owned by the petitioner is not exclusive and the attention of the witness Randolph being called to that condition, he replies that in view of the established character of the company, the probability of revocation of the franchise, or the establishment of a competitor are too remote to be considered of any value in his estimate.

Returning to the computation of the witness and taking up his testimony as to the recent and future output of the company's product, the proof does not sustain his anticipation. We have at hand definite information taken from the books of the company and showing the earnings, expenses, and net earnings from the 1st of January, 1902, to the 30th of June, 1907. The sales of gas, instead of increasing in the ratio stated by Mr. Randolph during the present year, which he based upon the reduction in the price of gas taking effect the 1st of January, 1907, to 85,000,000 feet, increased during the first six months of the present year to 37,421,000 feet, which will make for the year 74,842,000 feet.

His estimate of net earnings of $30,000 a year on which he bases his valuation does not agree with the actual facts. The account filed by the company, taken from its books, shows the net earnings for the first six months of the present year to be $13,379.58, which will make for the entire year $26,759.16, which capitalized at the rate of 5 per cent equals $535,183, which must be substituted for his estimate of $600,000, and which I adopt as the capitalization or total value of the physical or tangible property and value of the intangible assets of the company. Deducting from this Mr. Randolph's estimate or cost of reproduction of the physical property, $468,522, leaves $66,661 as the value of the franchise, rights, and good will.

In the several schedules attached to these findings I have stated the items making up the several classes of land, buildings, and apparatus, including in the latter the gas holders, also the street mains or pipes and the meters used by the consumers, together with their immediate connections. The totals of these several schedules are set forth in the summary herewith to which I have added the other items of street-lamp services, lamp posts, working capital, and the value of the franchise, rights, and good will.

I find as the result of the proof submitted and considered by me that the total actual cash value of the plant of the company, taken to include its property, physical and intangible, to be the sum of $470,777.30.

I note in the same summary schedule the floating indebtedness of the company as reported by the petitioner at $67,000.

——— ———, *Auditor.*

SCHEDULE A.

REAL ESTATE.

Lots 186, 188, 190, and parts of lots 41 and 42, in Lee Cazenove & Deakin's addition to Georgetown, in the District of Columbia, fronting on Thirtieth street about 216 feet; also the south 35 feet of lot 187, all of lots 189, 28, 29, and 30, fronting on Twenty-ninth street, about 222 feet—all of the land above described being situate in the square 1196 and containing 53,130 square feet, value	$37,191.00
Also lots 19 and 27 in square 1195, fronting 19 feet on Twenty-ninth street and 45½ feet on Twenty-eighth street, containing 8,047 square feet	5,632.90
Total value of land	42,823.90

SCHEDULE B.

BUILDINGS.

Governor house	$230.00
Stable	1,650.00
Oil pump house	165.00
Shop	402.00
Office building and secretary's office	7,192.00
Purifying room, condenser room, retort room, boiler room, engine room	23,790.00
Coal sheds	10,345.00
	43,774.00
Deduct for depreciation 5 per cent	2,188.70
	41,575.30

Brick retaining wall	$336.00
Stone wall, 100 by 8	544.00
Concrete wall	30.00
400 feet of fence	210.00
	42,705.30

SCHEDULE C.

APPARATUS.

Retort benches, 9 benches of sixes	$20,000.00
Exhausters, two roots, No. A, with engines and governors	1,950.00
Tar extractor, one B. and A. No. 5	975.00
Condenser, one air condenser 6 feet 6 inches diameter 23 feet high	2,170.00
Condenser, 4 feet diameter by 16 feet high	620.00
Scrubber, 4 feet by 16 feet high	300.00
Washer, 6 feet diameter by 15 feet long	4,500.00
Purifiers, two boxes 20 by 20 feet by 3 feet 6 inches	7,800.00
Station meter, 16 by 6 feet, one 6 feet by 6 feet 6 inches	3,150.00
Boilers, two, 50 horsepower each, with stack	2,000.00
Street main governor, one 12-inch, with connection and pit	770.00
Oil tank, one 4 feet 6 inches diameter by 5 feet 6 inches high	60.00
Tar and ammonia well, one brick tank, 20 feet diameter by 18 feet deep	1,050.00
Tar tank, 4 feet diameter by 12 feet high	300.00
Water tank	75.00
Scales, one 10-ton, one wheelbarrow scale	375.00
Tar, ammonia, and oil pumps	250.00
Yard connections and small piping	3,500.00
Tools	500.00
Photometers and gauges	150.00
4 horses	600.00
1 buggy	130.00
1 complaint wagon	150.00
4 dump carts	340.00
1 coke wagon	100.00
Harness	120.00
Office furniture	1,200.00
	53,735.00

SCHEDULE D.

STREET MAINS.

5,915 linear feet of 2-inch, at 28 cents	$1,656.00
57,450 linear feet of 3-inch, at 45 cents	25,850.00
60,135 linear feet of 4-inch, at 63 cents	36,081.00
19,695 linear feet of 6-inch, at 80 cents	15,756.00
4,110 linear feet of 8-inch, at $1.20	4,932.00
1,470 linear feet of 12-inch main, at $1.80	2,646.00
	89,921.00
Excavation	10,680.00
Restoring pavement	54,245.00
	151,846.00
Interest and engineering, 10 per cent	15,184.60
	167,030.60

SCHEDULE C.

	$53,735.00
Interest and engineering	5,373.50
	59,108.50

GAS HOLDERS.

One 50,000 cubic feet capacity brick tank	$11,000.00
One 100,000 cubic feet capacity brick tank	22,000.00
	33,000.00
Engineering and interest	3,300.00
	36,300.00

SCHEDULE E.

CONSUMERS' METERS.

Thirty-four 3-light, at $10	$340.00
One thousand two hundred and forty seven 3-light, at $6.50	6,105.00
Seven hundred and ninety-three 5-light, at $8	6,336.00
Fifty 10-light, at $10	525.00
Twenty-five 20-light, at $15	375.00
Eleven 30-light, at $22	242.00
Twelve 45-light, at $32	384.00
Seven 60-light, at $41	287.00
Two 100-light, at $63	126.00
One 200-light, at $123	123.00
One 300-light, at $190	190.00
Inspection and meter shelves, at $0.75	1,590.00
	18,623.00

SUMMARY.

Land	$42,823.90
Buildings	42,705.30
Apparatus	59,108.50
Gas holders	36,300.00
Street mains	167,030.60
595 street-lamp services	5,950.00
Consumers' meters and connections	18,623.00
Working capital	30,000.00
Value of franchise, rights, and good will	66,661.00
Total actual cash value	470,777.30

Senator LONG. I believe the report of that company gives those facts.

Senator SMITH. Are these companies one and the same now?

Mr. THOMAS. No; they are different companies. The Washington Gaslight Company was incorporated in 1848 and the Georgetown Gaslight Company was incorporated in 1854. They are separate corporations.

Senator SMITH. Supposed to be competitors?

Mr. THOMAS. Well, one does not infringe upon the territory of the other, because the Georgetown Gaslight Company is confined to the territory west of Rock Creek and has a smaller territory.

Senator PAYNTER. Has it the same officers?

Mr. THOMAS. No; they do not have the same officers.

Senator LONG. The report of the Georgetown Gaslight Company that has just been submitted to Congress shows that the certificates of indebtedness amount to $225,000, and that the amount of stock is $150,000. They also have what they call "accounts payable current" to the amount of $34,263.25.

Mr. THOMAS. Shall I state the story of the litigation?

The CHAIRMAN. I think you had better briefly state it, Mr. Thomas. Of course you understand that not only as far as to-day is concerned, but every day between now and the 4th of March we are extremely busy.

Mr. THOMAS. I understand, Mr. Chairman, and I will make it as brief as I can.

It was about eleven years after the passage of the act of June 6, 1896, that the Georgetown Gaslight Company made an application, in June, 1907, to the supreme court of the District of Columbia, to have its plant valued, so that it could increase its stock to the value of its plant. That case was referred to the auditor of our court, who is our master in chancery, and he took proof and returned his report, valuing the plant of the company. Exceptions were taken to that report but have not been argued because in November, following, before the exceptions to the report of the auditor made on the valuation of the Georgetown Gaslight Company were heard, the Washington Gaslight Company also filed a similar petition in the supreme court of the District of Columbia.

When that petition was filed, the legal representative of the District of Columbia filed objections to the court considering the petition, on the ground that section 5 of the act of June 6 did not confer any judicial power upon the supreme court of the District of Columbia, but did undertake to confer legislative or administrative powers, and that such powers could not be conferred upon a court, as such. A motion to that effect was made before the supreme court of the District of Columbia and the judge overruled the motion. Thereupon we applied to the court of appeals for a writ of prohibition, and after a hearing, that writ was granted and, as the Senator has stated, an appeal is now pending to the Supreme Court of the United States. I am informed the case will be reached some time next fall.

The only question that I think it is important for me to suggest to the Senators is whether, if there is a valuation of the plant of the gas companies, including its capital, which is largely made up as it is of the profits or surplus that it has acquired from selling gas to the consumers of the District of Columbia, and that valuation is made final, there will not be a vested right in all persons owning the stock, and in the company itself, to have that valuation maintained so that a reasonable rate, say 6 per cent interest per annum on the total amount thereof, must be earned, and therefore it may be impossible to reduce the price of gas so that the return shall be less than 6 per cent interest.

In this connection I desire to say, however, that there is a phrase in the opinion of Chief Justice Shepard, of the court of appeals, which indicates that notwithstanding the fact that the court may, if the act is constitutional, have the power to value the plant, yet it is probable that the company would have to apply to Congress to increase its stock. The expression used in the opinion on that point is this.

Senator LONG. Mr. Thomas, it is quite difficult for the members of the committee to get these opinions. Will you incorporate in the record the opinion in full of Judge Shepard and the dissenting opinion of Judge Van Orsdel, so that they will be in convenient form for all of us?

Mr. THOMAS. I will, Senator.

(The opinions referred to are as follows:)

[30 Appeals, D. C., p. 365.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

IN RE MACFARLAND.

OPINION OF THE COURT.

Mr. Chief Justice Shepard delivered the opinion of the court:

The case stated presents two important questions for determination.

The first of these involves the constitutionality of the act of Congress invoked in the original petition of the Washington Gaslight Company; that is to say, the power of Congress to impose upon the supreme court of the district of Columbia the duty of entertaining and acting upon that petition.

The second is whether this court, if it should be of the opinion that the supreme court of the District is without jurisdiction in the premises, has the power to issue the writ of prohibition prayed for.

1. After careful consideration, we are of the opinion that the duty of ascertaining the value of the plant of the Washington Gaslight Company, and of its future extensions and enlargements, as the basis for increasing its capital stock, is a legislative one, involving the exercise of no judicial power in the constitutional sense, and can not, therefore, be imposed upon the supreme court of the District of Columbia.

In the language of Mr. Justice Miller, delivering the opinion of the court in Kilbourne *v.* Thompson (103 U. S. 168, 190; 26 L. ed., 377, 386):

"It is believed to be one of the chief merits of the American system of written constitutional law that all the powers intrusted to government, whether state or national, are divided into the three grand departments, the executive, the legislative, and the judicial; that the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions." After enumerating these specific exceptions contained in the Constitution, which are in the nature of checks and balances of power, he proceeds to say: "In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments can not be exercised by another. It may be said that these are truisms which need no repetition here to give them force; but while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success."

The supreme court of the District of Columbia is one of the inferior courts whose creation is authorized by section 1 of article 3 of the Constitution, and possesses the same powers and exercises the same jurisdiction as the circuit and district courts of the United States. (Code, secs. 61 et seq., 31 Stat. L., 1199, chap. 854; Benson *v.* Hinkel, 198 U. S., 1, 14, 49 L. ed., 919, 923, 25 Sup. Ct. Rep., 569; United States *v.* Baltimore & O. R. Co., 26 App. D. C., 581, 587.) It is composed of six justices, who are empowered to hold special terms as circuit and district courts of the United States, as well as for other purposes made necessary by the exclusive jurisdiction of the United States over the territory comprised in the District of Columbia. It is to be observed that section 5 of the act under consideration authorizes the petition of the gas company for the ascertainment of the value of its plant and future extensions to be filed in said supreme court, the investigation to be had under such rules and regulations as the chief justice and associate justices thereof may prescribe; and upon the ascertainment of such values the corporation is authorized to issue additional stock and bonds not exceeding the value so ascertained. The power is conferred upon the court, and not upon any particular justice thereof as a special commissioner.

The right, therefore, to impose this power upon the court, as such, depends upon whether it is a judicial one. It is no sufficient answer to say that the question for ascertainment is judicial in its character because it involves the consideration of evidence and the exercise of discretion. In dealing with a question of this kind the supreme court of Connecticut has well said:

"One controlling consideration in deciding whether a particular act oversteps the limits of judicial power is the necessary inconsistency of such acts with the independence of the judicial department and the preservation of its sphere of action distinct from that of the legislative and executive departments. A main purpose of the division of powers between legislature and judicature is to prevent the same magistracy from exercising in respect to the same object the functions of judge and legislator. This union of functions is a menace to civil liberty and is forbidden by the Constitution. There is no intrinsic difficulty in recognizing a plain infraction of such prohibition. It is true that the different magistracies must act upon the same subjects, for every matter that may be dealt with by the state government may be acted on by each department thereof, but the action must be that belonging to the department whose powers are invoked. The main difficulties suggested in argument result from a failure to distinguish between the exercise of a legitimate power and the employment of necessary means for exercising that power. The grant of the powers embraced in one of the great departments of government carries with it the right to use means appropriate to the exercise of that power. Any attempt to cripple the power through metaphysical classification of the means essential to its exercise must produce difficulties, if not absurdities. For example: The power to make laws may require the accurate ascertainment of facts; for this purpose witnesses must be summoned, examined, and conclusions drawn from their conflicting testimony. This is a means peculiarly appropriate to the judicial power and the ordinary mark of an exercise of that power; yet when so employed by the legislature (without violation of other constitutional provisions) it is a means within the limits of legislative power. But should the legislature after the passage of an act attempt by another act to adjudicate the rights of parties which have arisen under its provisions, such act, although only means appropriate to legislation might be employed, would be an exercise of judicial and not of legislative power. It would be void because it involves the union in the same magistracy, in respect to the same matter, of the functions of judge and legislator. Again, there are certain necessary executive acts which can not be performed without the power of enforcing immediate obedience to an order authorized by law; the employment of legal restraint for the purpose of securing the essential immediate obedience is a means peculiarly appropriate to the exercise of judicial power, but for such purpose, and subject to the restrictions of other provisions of the Constitution, it is a means within the limits of the executive power. (Re Clark, 65 Conn., 17, 28 L. R. A., 242, 31 Atl., 522; Den ex dem. Murray *v.* Hoboken Land & Improv. Co., 18 How., 272, 15 L. ed., 372.) So, means of a legislative nature must be used by courts in establishing necessary rules of practice and by executive officers in making regulations for the conduct of subordinates." Norwalk Street Ry. Co.'s Appeal, 69 Conn., 576, 594, 39 L. R. A., 794,, 37 Atl., 1080, 38 Atl., 708.

In that case the statute authorized an appeal to the superior court from the action of the city authorities in refusing to approve the application of a street railway company for double tracking a portion of its line; and it was held that the court had no jurisdiction because it was not the exercise of a judicial power.

It is true that, in some instances, special tribunals have been created by Congress for the purpose of passing upon claims against the United States, from whose judgments, when final and conclusive, appeals will lie to the regular judicial tribunals. But in such instances the judicial power is involved, for the controversy presents all the elements of a case in the constitutional sense. (United States *v.* Coe, 155 U. S. 76, 39 L. ed., 76, 15 Sup. Ct. Rep., 16; United States ex rel. Bernardin *v.* Seymour, 10 App. D. C., 294, 307; United States *v.* Duell, 172 U. S., 576, 583, 43 L. ed., 559, 562, 19 Sup. Ct. Rep., 286.) The last cases cited affirm the right of appeal from the decisions of the Commissioner of Patents in refusing a patent or in determining the rights of adverse claimants to a patent in interference cases. The commissioner here acts in a judicial capacity, determining, in a formal proceeding, the right between the public and the applicant in one instance, and between contesting claimants in the other. Exercising this special judicial power in such cases, under the constitutional provision relating to patents, an appeal may be given from his judgments to a court whose judgment is final and must be executed. But in so far as his administration of his executive duties is concerned, there could be no appeal to any authority save to that of his superior executive officer. Instances of this kind furnish no precedent for the case here presented. One can hardly conceive of a case where the duties required

could be more aptly performed by a judicial tribunal than in the examination of the facts and the fixing of reasonable rates for common carriers, but such duties clearly belong to the legislative department, and can not be devolved upon the judiciary. (Reagan *v.* Farmers' Loan & T. Co., 154 U. S., 362, 397, 38 L. ed., 1014, 1023, 4 Inters. Com. Rep., 560, 14 Sup. Ct. Rep., 1047.)

The only way in which the question can be determined by a court is when a suit is instituted by a carrier affected by a rate fixed by legislative authority, alleging that the same is unreasonable, in the sense that it is the destruction of property; and then the sole question is as to the reasonableness of the particular rate. There is no power to declare a reasonable rate for future observance.

The creation of corporations, and their amendment, embracing the regulation of the amount of their capital stock, is a subject-matter exclusively within the legislative power, and is a power that can not be delegated, though under a general act, complete in its details, certain functions relating to the final act of issuing the certificate of incorporation may be delegated to special agencies. In some of the States where county and municipal courts are, under constitutional authority, local administrative bodies, vested with functions ordinarily vested in county commissioners, supervisors, and the like, they may be empowered to pass upon amendments to municipal charters affecting their territorial limits. But such powers can not be devolved upon strictly judicial tribunals, where the division of powers among the three departments of government provides for no such exception. (People ex rel. Shumway *v.* Bennett, 29 Mich., 451, 464, 18 Am. Rep., 107; Galesburg *v.* Hawkinson, 75 Ill., 152; State ex rel. Luley *v.* Simons, 32 Minn., 540, 542, 21 N. W., 750; re Ridgefield Park 54 N. J. L., 288. 291, 23 Atl., 674. See also re Cleveland, 51 N. J. L., 311, 316, 17 Atl., 772.)

Congress has unlimited power to amend the charter of the Washington Gaslight Company, increasing its capital stock at will. If it preferred, instead of making its own inquiry into the values of the property as a basis for action, to delegate that inquiry to the municipal officers of the District, it would have that power. Instead of delegating it to municipal officers, it has undertaken to convert one of the courts of the United States into such an agency. No judicial power is involved in the execution of the law. The determination to be made does not involve an asserted and contested right, and when made is not a final and conclusive one that may be given effect to by the power of the court. The petitioner is not bound to act upon the determination, nor is Congress bound by it. Should the petitioner desire to act upon the determination, Congress would probably have to pass an act amending the charter to that end, or else provide for the amendment under a general law. In pursuing either course it may adopt the ascertained valuation or change the amount of capital stock. On the other hand, it might repeal the former act and prescribe an entirely different rule. Again, the proceeding authorized is ex parte. No provision is made for opposing parties or a contest of the application. It is true the same court is authorized to make regulations for the procedure, but it is given no power to make the United States or the District of Columbia parties thereto. Nor could such discretionary power be delegated; it must be exercised by the Congress itself.

The particular question, as presented here, has not been determined by any court, so far as we are advised, but we think that the governing principle is plain. (Hayburn's case, 2 Dall., 409, 1 L. ed., 436; United States *v.* Todd, 13 How., 52 note, 14 L. ed., 47 note; United States *v.* Ferreira, 13 How., 40, 14 L. ed., 42; Gordon *v.* United States, 117 U. S., 697, Appx.; Re Sanborn, 148 U. S., 223, 37 L. ed., 430, 13 Sup. Ct. Rep., 577; Interstate Commerce Commission *v.* Brimson, 154 U. S., 447, 485, 38 L. ed., 1047, 1060, 4 Inters. Com. Rep., 545, 14 Sup. Ct. Rep., 1125.)

In Hayburn's case the action of the majority of the circuit courts was upheld in refusing to execute an act of Congress requiring them to examine the evidence in support of claims preferred by soldiers of the Revolution to pensions granted to invalids by the act, and to determine the amount of pension that would be equivalent to the disability shown. These pensions were to be certified to the Secretary of War, who was authorized to withhold the pension if he had cause to suspect imposition or mistake and to report the case to the next session of Congress. This act was amended immediately after the decision in Hayburn's case by repealing the second, third, and fourth sections of the act of 1792, which gave rise to the questions stated in the note to that case, and provided another way of taking the testimony and deciding upon the validity of pensions granted by the former law, saving all rights to pensions which might be founded upon "any legal adjudications" under the act of 1792. Certain of the judges had acted under the act of 1792, holding that the intention of that act was not to require judicial action, but to designate the judges of the courts, by official instead of personal description, as commissioners, which positions they might accept or decline. In Todd's case, brought to determine the validity of their

action as such commissioners, by action to recover money paid in accordance with their action, it was held, as in Hayburn's case, that the power sought to be conferred upon the circuit courts was not judicial power within the meaning of the Constitution, and could not, therefore, be exercised by them; and further, that the act of Congress intended to confer the power as a judicial function, and could not be construed as authority to the judges to exercise the power out of court as commissioners. The result was a judgment for the recovery of the money.

In United States *v.* Ferreira the act of Congress to carry into effect the provisions of the treaty whereby Florida had been acquired required the judges of the superior court of San Augustine and Pensacola districts to receive and adjust all claims arising under said treaty; their decisions to be reported to the Secretary of the Treasury, who, on being satisfied that the claims are just and equitable, should pay them. An appeal was taken by the district attorney of the United States on their behalf from one of such findings, which the Supreme Court dismissed for want of jurisdiction. Those territorial judges, and not the courts, were charged with the duty, which, it was held, was not a judicial power. It was said:

"It is manifest that this power to decide upon the validity of these claims is not conferred on them as a judicial function to be exercised in the ordinary forms of a court of justice. For there is to be no suit; no parties in the legal acceptance of the term are to be made; no process to issue; and no one is authorized to appear on behalf of the United States or to summon witnesses in the case. The proceeding is altogether ex parte; and all that the judge is required to do is to receive the claim when the party presents it and to adjust it upon such evidence as he may have before him or be able himself to obtain. But neither the evidence nor his award are to be filed in the court in which he presides, nor recorded there; but he is required to transmit both the decision and the evidence upon which he decided to the Secretary of the Treasury; and the claim is to be paid if the Secretary thinks it just and equitable, but not otherwise. It is to be a debt from the United States upon the decision of the Secretary, but not upon that of the judge. It is too evident for argument on the subject that such a tribunal is not a judicial one, and that the act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of a commissioner to adjust certain claims against the United States; and the office of judges and their respective jurisdictions are referred to in the law merely as a designation of the persons to whom the authority is confided and the territorial limits to which it extends. The decision is not the judgment of a court of justice; it is the award of a commissioner."

Again it was said: "The powers conferred by these acts of Congress upon the judge as well as the Secretary are, it is true, judicial in their nature. For judgment and discretion must be exercised by both of them. But it is nothing more than the power ordinarily given by law to a commissioner appointed to adjust claims to lands or money under treaty, or special powers to inquire into or decide any other particular class of controversies in which the public or individuals may be concerned. A power of this description may constitutionally be conferred on a Secretary as well as on a commissioner. But it is not judicial in either case, in the sense in which judicial power is granted by the Constitution to the courts of the United States."

The proceeding in the particular case was before a United States district judge under the amendatory act of 1849, who sat as a commissioner, and it was held that the act did not authorize him to convert a proceeding before a commissioner into a judicial one, and give an appeal from his decision to the supreme court. As we have seen, the act under consideration, like that passed upon in Hayburn's and Todd's cases, did not undertake to confer the power upon a justice of the supreme court of the District as a special commissioner, but upon the court as a judicial power. The question, therefore, is not whether one of the justices of the supreme court may be charged, as a special commissioner, with the duty of making an inquiry and finding in a special matter submitted to him as such by Congress, but whether that duty can be imposed upon one of the courts of the United States.

In Interstate Commerce Commission *v.* Brimson (154 U. S., 447, 38 L. ed., 1047, 4 Inters. Com. Rep., 545, 14 Sup. Ct. Rep., 1125) the other cases, before cited were reviewed and their doctrine affirmed. In that case, the question was whether the act of Congress authorizing the Interstate Commerce Commission, a tribunal charged with the power of inquiry into the reasonableness of the freight rates of common carriers engaged in interstate commerce, to call witnesses and require the production of books and papers, could confer upon the courts of the United States, upon the complaint of the commission, the power to summon witnesses who had refused to answer the questions propounded by that body, and compel them to give evidence and produce papers, under the penalty of contempt. Agreeing that Congress could not impose upon the courts any duties not strictly judicial, it was held that the powers

conferred by the act in question were of that nature. It was said that they presented all the elements of a case, as declared in Osborn *v.* Bank of United States (9 Wheat, 738, 819, 6 L. ed., 204, 223): "This clause enables the judicial department to receive jurisdiction, to the full extent of the Constitution, laws, and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States." See also Smith *v.* Adams (130 U. S., 173, 32 L. ed., 897, 9 Sup. Ct. Rep., 566), where it was said that the term "cases and controversies" in the Constitution embraced "the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs."

Applying these principles the court said: "The present proceeding is not merely ancillary and advisory. It is not, as in Gordon's case, one in which the United States seeks from the circuit court of the United States an opinion that 'would remain a dead letter and without any operation upon the rights of the parties.' The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. And that judgment may be enforced by the process of the circuit court. Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the Government, rests upon the defendants, can not be directly enforced except by judicial process. One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of Sanborn's case, will be 'a final and indisputable basis of action,' as between the commission and the defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is not the less the judgment of a judicial tribunal dealing with questions judicial in their nature and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution."

There is no substantial ground for the proposition that the power extended to the supreme court of the District of Columbia is a judicial one, in aid of the execution of a legislative act, as was the fact in Brimson's case. Congress had ample power to amend the charter of the gaslight company by increasing its capital stock and right to issue bonds, and to ascertain all the necessary or proper information leading to a just exercise of that power. If it preferred to have that inquiry made by some agency, it had the power to delegate it to the municipal officers of the District, or some other administrative agency. The act imposed no duty upon anyone, the performance of which, as in Brimson's case, could only be obtained by resort to the judicial power. The act is an attempt to convert one of the courts into an administrative agency. No judicial power is invoked in the duty required by the act. As before stated, the determination is not a final and conclusive one that may be executed by the power of the court. It is not a judicial decree. Unlike that in Brimson's case, the act makes no case for the exercise of judicial power. The proceeding is ex parte. No provision is made for a contest of petitioner's request. The benefit which it might obtain is not the creation of a property right, but a mere license. No duty is imposed upon or required of it. On behalf of the public interest, the act in Brimson's case imposed a duty upon all persons to give evidence before a commission which had no power to enforce the attendance and obedience of witnesses, and could be invested with none. To make the act effective, by guarding against a refusal to obey its provisions, a judicial proceeding was authorized in the form of a regular case, in which there is a complainant and a defendant. The court was called upon, in a formal action, to determine a right as between the respective parties, under the law, and to render a regular and formal judgment declaring that right, which judgment was binding and conclusive, and within the usual power of the court to enforce. The proceeding presented all the essential elements of a case or controversy, in the constitutional sense—a complaint and a complainant, a defendant and a judge to decide and enforce.

Now, is there any analogy between the question in this case and that determined in another case on which the respondent relies, Canada Northern R. Co. *v.* International Bridge Co. (7 Fed., 653). The act of Congress in that case authorized the construction and maintenance of a bridge across the Niagara River by the bridge company, and provided that all railway companies desiring to use the same should have equal rights and privileges in the passage of the same, and in the use of the machinery and fixtures thereof, and all the appurtenances thereto, under and upon such terms and conditions as shall be prescribed by the district court of the United States for the northern district of New York upon hearing the allegations and proofs of the parties in case they shall not agree. The Canada Southern Railway, one of those authorized to use said bridge, filed its petition against the bridge company in the said court, alleging that it had been unable to agree with the bridge company upon the compensation therefor, and praying an adjudication of the terms upon which it might use the said bridge. Holding that Congress had complete power to make the provision for the use of the bridge, it was further held that Congress had the power to devolve upon the court the duty of determining the disputed question in regard to the compensation for its use. Judge Wallace said: "The rights are created and established by the act; and this is the office of the legislative department. The power to adjudicate upon these rights, to ascertain, when controversy arises, their extent and value, and apply the appropriate remedy for their protection, is conferred upon the court; and this is the peculiar province of the judicial department." Here we have a right in the nature of property created by law, a deprivation of that right, a formal complaint against the party denying it, filed in a court of competent jurisdiction with power to determine the contested right and render a judgment or decree conclusive of the controversy, that could be enforced in the ordinary course of judicial proceeding.

We remark, in conclusion, that we fail to perceive any substantial difference between the statute under consideration in this case and one that would require the same court to hear evidence relating to all the conditions of the business of the gas company, and thereupon to ascertain and declare its rate of charges to consumers of gas in the District of Columbia. No one pretends that this last power could be conferred upon the court.

2. This brings us to the consideration of the second question: Has this court the power to issue the writ of prohibition prayed for in this case?

Prohibition is one of the remedial prerogative writs of the common law to prevent an inferior court from assuming jurisdiction of a matter beyond its legal cognizance. We think it clear that the court of appeals can not claim the possession of any inherent superintending or supervisory power over the inferior courts of the District of Columbia that would warrant the issue of such a writ. Whatever jurisdiction it has must be found in the act of its creation, approved February 9, 1893, and acts supplemental thereto. (Code, secs. 221 to 230; 31 Stat. L., 1224–1227, chap. 854.) This last section confers the "power to issue all necessary and proper remedial prerogative writs in aid of its appellate jurisdiction." In accordance with this view a writ of certiorari to the police court of the District was denied because, at the time, there was no appellate jurisdiction over that court. (Ex parte Dries, 3 App. D. C., 165, 167.)

The Supreme Court of the United States has also refused to issue a writ of prohibition to the supreme court of the District of Columbia for the same reason. (Re Massachusetts, 197 U. S., 482; 49 L. ed., 845; 25 Sup. Ct. Rep., 512. See also Re Glaser, 198 U. S., 171; 49 L. ed., 1000; 25 Sup. Ct. Rep., 653.) However, section 7 of the act aforesaid (Code, sec. 226) confers the right of appeal to this court, at the instance of an aggrieved party, from any final order or decree of the supreme court of the District of Columbia, or any justice thereof; and, with some limitations, this right of appeal extends to interlocutory orders. Having this appellate jurisdiction, it is not necessary that an attempt shall have been made to invoke that jurisdiction before it can be said to attach in order to authorize the issue of a remedial writ in aid thereof. The decisions of the Supreme Court of the United States bearing on this question have been ably reviewed by the circuit court of appeals for the eighth circuit in the well-considered case of Barber Asphalt Paving Co. *v.* Morris (67 L. R. A., 761; 66 C. C. A., 55; 132 Fed., 945).

The conclusion of that court, in which we concur, is thus stated:

"The reasons and decisions to which we have now adverted have impelled our minds with irresistible force to the conclusion that the true test of the appellate jurisdiction in the exercise or in the aid of which the circuit court of appeals may issue the writ of mandamus is the existence of that jurisdiction, and not its prior invocation; that it is the existence of a right to review by a challenge of the final decisions, or otherwise, of the cases or proceedings to which the applications for the writs relate, and not the prior exercise of that right by appeal or by writ of error." (See also Taylor, Jurisdiction and Procedure of U. S. Sup. Ct., 548 et seq.) It would be an

unnecessary consumption of time to repeat the review of the cases supporting the doctrine that has been enounced.

A state of facts analogous to that in the case at bar is shown in one recently before the Supreme Court of the United States and decided since the submission of this case. (Re Metropolitan Railway Receivership (Re Reisenberg), 208 U. S., 90; 52 L. ed. —; 28 Sup. Ct. Rep., 219.) The opinion delivered embraced two original applications for leave to file petitions for mandamus, or in the alternative for a writ of prohibition, to one of the circuit judges of the second circuit and to the circuit court commanding the dismissal of a bill of complaint against certain railroad companies, and all proceedings therein, and the vacation of injunctions and orders appointing receivers, as well as desisting from exercising any further jurisdiction over the said roads in said suit. The applicants for the writs were creditors of the railroad companies, and it appeared that they had applied for leave to intervene in said suit, alleging fraud and collusion between complainants and defendants therein to avoid the jurisdiction of the state courts and make a case cognizable in said circuit court. Their applications for leave to intervene were denied, and from these orders no appeal could be prosecuted. The court assumed jurisdiction without discussing the question, and denied the applications on their merits.

3. It is the well-settled doctrine that the writ of prohibition will not issue in any case where there is another practical and adequate remedy. (Re Rice, 155 U. S., 396, 403; 39 L. ed., 198, 201; 15 Sup. Ct. Rep., 149; Alexander *v.* Crollot, 199 U. S., 580; 50 L. ed., 317; 26 Sup. Ct. Rep., 161; United States ex rel. Morris *v.* Scott, 25 App., D. C., 88; United States ex rel. Holmead *v.* Barnard, 29 App. D. C., 431, 432.)

There appears to be no other remedy whatever in this case. While the gas company might have the right of appeal from an order of the court below refusing the relief prayed, there is no corresponding right of appeal from an order granting that relief, for there is no adverse party against whom the order runs. Neither the District Commissioners nor the Attorney-General, to whom notice of the proposed hearing was given, presumably as representatives of the public interests, could appeal from the order, because they are not made by the act parties to the proceedings. Their situation is something like that of the applicants in re Metropolitan Railway receivership, supra, who had no appeal from the order refusing their intervention in a suit wherein they had an indirect interest only. Should the hearing contemplated in the court proceed to a final determination, the possible injury to the public interests, apprehended by the representatives thereof, could not be averted.

Notwithstanding the powers attempted to be conferred upon the supreme court of the District of Columbia are not judicial in the constitutional sense, they are quasi judicial in that they are conducted, in a measure, under judicial forms and rules leading to the announcement of an order thereon by a judicial officer. The exercise of the power we have held to be unlawful. Therefore, as its exercise might possibly result in injury for which there is no other adequate remedy, we will order the writ of prohibition to issue to prohibit further preceedings in the court below, as prayed. The costs of this proceeding will be adjudged against the Washington Gaslight Company, one of the respondents. It is so ordered.

DISSENTING OPINION.

Mr. Justice Van Orsdel, dissenting:

I am unable to concur in the opinion and judgment of the court in this case, and I believe that its importance warrants a statement of my views. The court has declared unconstitutional an act of Congress conferring upon the supreme court of the District of Columbia judicial authority to ascertain and decree the value of the plant and future extensions of the Washington Gaslight Company, which valuation, under the act, establishes a limitation beyond which the company may not go in the increase of its capital stock.

Before declaring a statute unconstitutional, courts should resolve every reasonable doubt in favor of its validity, and if possible, so construe it as to carry into effect the legislative will. The Washington Gaslight Company is a public-service corporation. Its regulation is a matter of highest concern. No narrow view should be taken in construing the power of Congress in enacting laws for its proper control and to restrain it from disregarding the public interests. The capitalization of this company is an important factor in fixing the price at which gas shall be sold to the public. Congress arbitrarily could have provided, as it did in respect to this corporation in the past, for the increase of the capital stock to a fixed amount. This policy, in respect to the operation of a corporation in which the public is so vitally interested, without any attempt to ascertain the actual value of its property, would afford little protection to the public, and might lead to grave abuse. Congress could have conducted

such an investigation itself, and accordingly provided for the issue of additional stock, or it could have delegated the duty of making this investigation to an officer or body of officers appointed by its authority. It is within the power of the legislative department of the Government to impose upon the executive and judicial branches duties that, with equal propriety, might be performed by itself. It was not intended that the legislative, executive, and judiciary departments should be disconnected wholly from each other. Unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation essential to a free government can not, in practice, be maintained. Judge Story, in his Commentaries on the Constitution (vol. 1, sec. 525), speaking of the division and assignment of the powers of government into three different departments, the legislative, the executive, and the judicial, says:

"It is not meant to affirm that they must be kept wholly and entirely separate and distinct and have no common link of connection or dependence the one upon the other in the slightest degree. The true meaning is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments, and that such exercise of the whole would subvert the principles of a free constitution."

The Constitution does not define or fix boundaries within which the three departments of the Government shall exclusively operate. No such a narrow construction was contemplated by its framers. Only general limitations were fixed within which the powers of the several departments were prescribed. No exact and complete delimitation of the several departments has yet been defined by the courts, and it is doubtful if the problem will admit of a solution.

Thus it will be observed that Congress is given wide latitude in conferring special powers upon the coordinate branches of the Government. If Congress, in the act in question, has legislated on those matters that exclusively belong to it, the execution of the law may properly be delegated away. It seems that the first test to be applied is whether Congress has acted on all questions embraced in the act which belong exclusively to the legislative department. It is true that a court has no power to fix the amount of capital stock a corporation may issue or to place a limit upon the increase of capital stock. These are matters exclusively within the power of the legislature. But that power has been exercised by Congress in the case at bar, and a distinct limitation has been fixed. It shall not exceed the value of the plant and the future extensions. This value when ascertained constitutes the limitation definitely fixed in the act. What has been imposed upon the court is to ascertain and adjudge by judicial determination the value of the plant and the future extensions.

That Congress could have conducted this investigation will not, I think, be disputed, but this fact does not prevent it from imposing the same duty upon the supreme court of the District of Columbia. In the case o f United States *v.* Duell (172 U. S., 576; 43 L. ed., 559; 19 Sup. Ct. Rep., 286) the court said: "Doubtless, as was said in Den ex. cem. Murray *v.* Hoboken Land and Improvement Company (18 How., 272, 284; 15 L. ed., 372, 377), Congress can not bring under the judicial power a matter which, from its nature, is not a subject for judicial determination; but at the same time, as Mr. Justice Curtis, delivering the opinion of the court, further observed, 'there are matters involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' The instances in which this has been done are numerous, and many of them are referred to in Fong Yue Ting *v.* United States (149 U. S., 698, 714, 715, 728; 37 L. ed., 905, 913, 914, 918; 13 Sup. Ct. Rep., 1016)."

Here all the rights are created and fixed by Congress, and the power to adjudicate and determine the extent of the right, when the company seeks to avail itself of the privilege granted by the act, is conferred upon the court. In the case of Canada Northern Railway Company *v.* International Bridge Company (7 Fed., 653) power was conferred upon a district court of the United States, in case of controversy, to determine and fix the compensation that should be paid for the use of a bridge. In the course of the opinion the court said:

"The rights are created and established by the act; and this is the office of the legislative department. The power to adjudicate upon these rights, to ascertain, when controversy arises, their extent and value, and apply the appropriate remedy for their protection, is conferred upon the court; and this is the peculiar province of the judicial department. It is argued that the act attempts to confer upon the court the power to fix the rate of tolls which the International Bridge Company may charge, and that this is a legislative and not a judicial function. If Congress had fixed the rate of tolls, as it had the right to prescribe the conditions upon which the franchise

might be enjoyed, no other authority could have intervened to change these conditions. But suppose the act had, in terms, provided that the bridge company might charge reasonable tolls, would not this have been a complete exercise of the legislative power, and would it not have remained for the judicial department to decide, when controversy should arise, what were or were not reasonable tolls? And if the act had provided for such a determination by a judicial tribunal, would this have been unconstitutional? It seems to me clearly not. It is no less the exercise of judicial functions to prescribe a rule of conduct or protect the existence of a right during a future period than it is to determine whether the right has been invaded in the past. It is one of the common offices of a court of equity to do this."

The subject here submitted for judicial determination is the value of the plant and its future extensions. The finding of the court on this point is final and conclusive upon the company, and furnishes a maximum limit beyond which the company can not go in the issue of its capital stock. The judgment, instead of being intended to compel the company to comply by issuing stock, is intended to restrain it within proper bounds if it chooses to exercise the right granted by the act. If the company refuses to accept and issue the stock, the same end is accomplished by the judgment, only that it has had a still greater restraining effect than if its limitations had been accepted. The judgment is not only binding upon the company, but it is conclusive. There is no way in which the capital stock can be increased except by strict compliance with the terms of the decree. Congress no doubt considered that the failure of the company to accept the terms prescribed by the act could not in any manner prejudice the public interests. Hence, it will be observed that the finding of the court either restrains the company from taking any action whatever, or compels obedience to the court's decree. It is obvious that if the company should attempt to disobey the judgment of the court by issuing stock in excess of the value found by the court, the court would have jurisdiction to enforce a strict compliance with the terms of its decree.

In United States *v.* Ferreira (13 How., 40; L. ed., 42), cited in the opinion of the court, no decree was entered. The court simply forwarded the papers, with its findings therein, to the Secretary of the Treasury for final action. Hence, the court became a mere auditor for an executive officer of the Government. The action of the court could be affirmed or disregarded by the Secretary of the Treasury, as he might deem proper. So, in Hayburn's case (2 Dall., 409; 1 L. ed., 436), and United States *v.* Todd (13 How., 52, note; 14 L. ed., 47, note), cited by the court in its opinion, the finding of the court there was subject to review and nullification by the Secretary of War—another executive officer. In the case of Re Sanborn (148 U. S., 222, 226; 37 L. ed., 429, 431; 13 Sup. Ct. Rep., 577), the court said: "Such a finding is not made obligatory on the department to which it is reported—certainly not so in terms—and not so, as we think, by any necessary implication. We regard the function of the Court of Claims, in such a case, as ancillary and advisory only. The finding or conclusion reached by that court is not enforceable by any process of execution issuing from the court; nor is it made, by the statute, the final and indisputable basis of action either by the department or by Congress." This language will apply with equal force to the other cases cited in the opinion of the court and relied upon to support its conclusions. But that is not this case. Here, so long as the act stands upon the statute books, there can be no review of a judgment entered under its provisions outside of the judicial department of the Government. It stands as a part of the record of the court, a binding judgment as to the value of the plant and future extensions at the time it was entered, and a limitation upon the powers of the company in increasing its capital stock. As I have observed, it is not only a limitation, but binds the company to the extent that it can not increase its capital stock in any other way, except by a strict compliance with the terms of the decree. The proceedings are not advisory or ancillary. No further action is necessary by Congress to authorize the issuance of the stock. All that is required is a strict compliance by the company with the decree of the court, and the authority to proceed under the statute is complete.

It is claimed that the act is defective in that it does not provide any method by which service may be made and a party defendant brought into court. Conceding that Congress could not confer upon the court the power to make a rule that would compel a party to come in and defend, it is perfectly competent for a court to make a rule by which general notice may be given, and under which any party interested may come into court and be heard. Notice by publication was provided for in the rules promulgated in this case, and the right expressly reserved for the stockholders to appear and protect their rights. It is unnecessary for the admission of a party to an action, either that the party shall have had notice, or that the court shall have express power to compel such party to appear. The party may appear voluntarily, and, if he appears to have a justifiable interest in the subject of litigation, the court

will permit him to be heard. In most civil actions it is optional with the defendant whether he appears or not. He may elect to permit judgment to run against him by default. The summons or notice is served on a defendant to an action to give the court jurisdiction to enter and enforce its judgment either in favor of or against the person so notified. Here the petitioner is the only one against whom the court can enforce its judgment. There is no defendant who can be judicially affected by the decree. It is, by reason of this, no less a proper judicial proceeding. In many ex parte proceedings the only party affected by the decree entered therein is the petitioner, but usually general notice by publication is given, affording an opportunity for any person interested to appear and assert his rights. The same right of appearance in such a proceeding exists in the absence of notice, especially where the remedy sought runs in favor of or against the petitioner, as in the case at bar, and as is generally true in ex parte proceedings. It may be suggested that the rule, in addition to providing for general notice by publication, requires service to be made upon at least one of the Commissioners of the District of Columbia, and upon either the Attorney-General or Solicitor-General of the United States. In compliance with such service, it was admitted at bar that the Commissioners of the District appeared and defended in the case of the Georgetown Gaslight Company. The same parties are here defending on behalf of the public, as it is their duty to do, and as they would doubtless do in proceedings of this kind in the future. Their appearance, however, does not change the ex parte action into a proceeding inter partes. The decree entered can bind only the company, and that is all that was intended by Congress. It does demonstrate, however, that both Congress and the court, by its rules, have provided fully for the protection of the public interests.

But it is further suggested that, from the duty imposed upon the court by the act of Congress, such a case can not arise as calls for the proper exercise of judicial power. In the case of the Interstate Commerce Commission *v.* Brimson (154 U. S., 447; 38 L. ed., 1047; I. C. C. Rep., 545; 14 Sup. Ct. Rep., 1125) the court, considering the constitutionality of the twelfth section of the interstate-commerce act, authorizing circuit courts of the United States to use their process in aid of inquiries before the commission, said: "What is a case or controversy to which, under the Constitution, the judicial power of the United States extends? Referring to the clause of that instrument which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice Marshall, has said: 'This clause enables the judicial department to receive jurisdiction, to the full extent of the Constitution, laws, and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States.' (Osborn *v.* Bank of United States, 9 Wheat., 738, 819; 6 L. ed., 204, 223.) And in Den ex dem. Murray *v.* Hoboken Land and Improvement Company (18 How., 272, 284; 15 L. ed., 372, 377) Mr. Justice Curtis, after observing that Congress can not withdraw from judicial cognizance any matter which from its nature is the subject of a suit at the common law, or in equity, or admiralty, nor, on the other hand, bring under judicial power a matter which from its nature is not a subject for judicial determination, said: 'At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States as it may deem proper.' "

In that case Congress had created the Interstate Commerce Commission, and delegated certain powers to it for the regulation of public-service corporations engaged in interstate commerce. Here Congress is legislating for the regulation of a public-service corporation. In both instances "there are matters involving public rights." The matters here presented are "in such form that the judicial power is capable of acting on them," and they "are susceptible of judicial determination." Congress, in bringing this matter within the cognizance of a court of competent jurisdiction instead of legislating directly upon the subject, certainly acted within the limits of the powers conferred upon it by the Constitution.

Considering the plenary power reposed in Congress by the Constitution (Art. I, sec. 8, cl. 17) to legislate for the government of the District of Columbia, I am of the opinion that the power conferred by the act in question upon the supreme court of the District is a constitutional delegation of judicial authority.

On February 14, 1908, a writ of error to the Supreme Court of the United States was applied for by the respondents and allowed.

On the same day the respondent, the Washington Gaslight Company, filed a motion in this court for an amendment of the opinion and judgment of the court.

The motion was denied, February 18, 1908, Mr. Chief Justice Shepard delivering the opinion of the court:

This is a motion on behalf of the respondent, the Washington Gaslight Company, to have an amendment of the opinion and judgment in this case so as to show an express disposition of an exception and motion of the petitioners.

The record shows that the petitioners filed an exception to and motion to strike out so much of the respondent's return to the rule to show cause as refers to the proceedings had in the supreme court of the District of Columbia on the petition of the Georgetown Gaslight Company, because the same are no part of the record in the matter of the application of the Washington Gaslight Company. These were not called to the attention of the court for action, and passed without notice in the opinion for that reason. The fact of the proceedings in the Georgetown Gas Company case was incidentally before us in the argument.

It is argued that because no express disposition was made of the exception and motion, that fact may cause a writ of error from the Supreme Court of the United States, that has been applied for, to be dismissed, because a part of the case remains undisposed of. We think there is no substantial ground for such apprehension. The case was disposed of on its merits, and the final judgment thereon carries with it all incidental questions that might have been considered and determined therewith, whether discussed or not in the opinion delivered. The exception and motion were not noticed because they were not called to the attention of the court, though filed and appearing in the record. They relate to a formal matter, apparently unimportant in the consideration of the merits of the case, and may well be regarded as having been waived by the failure of the petitioners to ask for their determination. This, we think, was the effect of the omission, and we see no occasion to reopen the case in order to make an express disposition of them now. This statement of the facts is made that the appellate court may be fully advised of the situation; and the motion is denied.

Senator LONG. I do not wish to interfere with your calling attention to a particular part of the opinion.

Mr. THOMAS. I had not noticed this myself until recently.

No judicial power is involved in the execution of the law. The determination to be made does not involve an asserted and contested right, and when made is not a final and conclusive one that may be given effect to by the power of the court. The petitioner is not bound to act upon the determination, nor is Congress bound by it. Should the petitioner desire to act upon the determination, Congress would probably have to pass an act amending the charter to that end, or else provide for the amendment under the general law. In pursuing either course it may adopt the ascertained valuation, or change the amount of capital stock. On the other hand, it might repeal the former act and prescribe an entirely different rule.

Those two propositions, gentlemen, are all I have to submit. I wish to file also a digest of the act of Congress relating to the Washington Gaslight Company and the Georgetown Gaslight Company, which were furnished by these companies in the proceedings mentioned.

(The digest referred to is as follows:)

DIGEST OF ACTS OF CONGRESS RELATING TO THE WASHINGTON GASLIGHT COMPANY AND THE GEORGETOWN GASLIGHT COMPANY.

Charter of the Washington Gaslight Company. (July 8, 1848; 9 Stat. L., ch. 96, p. 702.)

Charter of the Georgetown Gaslight Company. Extended March 3, 1873. (July 20, 1854; 10 Stat. L., ch. 98, p. 786.)

An act to provide internal revenue, etc. Gas companies to add tax to price of gas (war measure). (July 1, 1862.)

Act to provide internal revenue, and gas companies to add tax to price of gas (war measure). (June 30, 1864.)

An act to regulate gas works. (June 23, 1874; 18 Stat. L., 277; Supp. R. S., vol. 1, ch. 480, p. 52.)

Section 1 provides that standard power and purity of gas in District of Columbia shall be 16 candlepower. It further provides a penalty of $100 per day for supplying gas of less power, etc., but provided, however, that if it shall appear that such

deviation from the above-named standards could not have been prevented by ordinary care and prudence, but was occasioned by some unavoidable cause, then the said penalty shall not be enforced.

SEC. 2. That a suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, to be designated and known as inspector of gas and meters, whose compensation shall be a salary of two thousand dollars per annum, and whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them.

It also provides for an assistant inspector. The office of assistant inspector, however, was abolished July 1, 1882. (Ch. 263, par. 1, p. 351, Supp. R. S.)

SEC. 3. That a laboratory shall be provided and fitted up by the Washington Gaslight Company, subject to the approval of the inspector, in the central part of the city of Washington, at a distance as near as may be, of two thousand feet from any gas works, and furnished with suitable apparatus for the transaction of the business of the inspector and assistant inspector, for which it is intended, and the laboratory shall be kept open on all business days between the hours of eight o'clock in the forenoon and five o'clock in the afternoon: *Provided*, That the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia, in proportion to their sale of gas for the year eighteen hundred and seventy-three.

Section 4 provides that companies and persons furnishing gas may be represented at each testing of gas by the inspector.

Section 5 provides for daily inspection between the hours of 5 and 11 in the afternoon, and record kept of illuminating power and purity of gas, which record shall be open to public; copy of daily inspection shall be furnished company, person, or persons furnishing gas, and full monthly report to be furnished, upon request, to any daily newspaper in Washington, D. C.

Section 6 provides that bills shall state power and be reduced if gas is below standard.

Section 7 provides how meters shall be tested, defines standard foot, requires inspector to keep record of all meters inspected.

Section 8 provides that meters in use at passage of act shall be tested on request, and that all meters shall first be inspected, proved, and sealed before used.

Section 9 requires companies to remove meters for test and return same.

Section 10 requires inspector and assistant to give bond in double his annual salary, and take oath to faithfully, etc., discharge duties.

Section 11 fixes price of gas at $2.50 per 1,000 feet for gas furnished United States, and at $2.75 when furnished other parties and inhabitants of Washington, D. C.; but if the party or inhabitant shall pay monthly bill within seven days from rendition a discount of 25 cents per 1,000 feet shall be allowed. But price of gas shall be advanced or reduced 10 cents per 1,000 feet for every $1 advance or reduction in the price of coal. Gas company to furnish statement to Secretary of Interior as to contracts or purchases of coal for the ensuing year and advance or reduction of price shall take effect on the 1st of July ensuing.

Section 12 provides that gas be furnished District of Columbia at same rate as to United States; that gas company shall light, extinguish, clean, and repair Washington city street lamps at 40 cents per lamp per annum, etc.

Section 13 provides for stoppage of gas for nonpayment of bills, and restricts removal of meters to from between 8 a. m. and 2 p. m.

Section 14 provides for amendment or repeal of this act by Congress.

Section 15 provides punishment of imprisonment not exceeding six months or fine not exceeding $250, for fraudulently obtaining gas.

SEC. 16. That the price which may be charged for gas by any gaslight company in the District of Columbia shall be uniform and the same to all consumers, and any reduction made in the price or cost to any person or persons, except to officers of the company, shall furnish a legal right on the part of any other person or persons to demand gas at the same cost or price.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1877, and for other purposes. (July 31, 1876; 19 Stat. L., 102; Supp. R. S., vol. 1, ch. 246, p. 115.)

Paragraph 5 provides that superintendent of meters shall report consumption of gas in department buildings. This is repeated in 1877, March 3, chapter 105 (19 Stat. L., 359).

An act providing a permanent form of government for the District of Columbia. (June 11, 1878; 20 Stat. L., 102; Supp. R. S., vol. 1, ch. 180, p. 175.)

Said commissioners shall have power to erect, light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary. (Ibid., p. 178.)

It shall be the duty of the Commissioners of the District of Columbia to see that all water and gas mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down. And the Washington Gaslight Company, under the direction of said commissioners shall, at its own expense, take up, lay, and replace all gas mains on any street or avenue to be paved, at such time and place as said commissioners shall direct.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1879, and for other purposes. (June 20, 1878; 20 Stat. L., 206; Supp. R. S., vol. 1, ch. 359, p. 202.)

Paragraph 2 provides that the Washington Gaslight Company shall light the city lamps at such price as shall to the said commissioners appear to be just and reasonable.

An act making appropriations, etc., for District of Columbia, and for other purposes. (July 1, 1882; 22 Stat. L., 135; Supp. R. S., vol. 1, ch. 263, p. 351.)

Provides that office of assistant inspector of gas and meters be abolished.

An act making appropriations, etc., and for other purposes. (Aug. 7, 1882; 22 Stat. L., 302; Supp. R. S., vol. 1, ch. 433, p. 381.)

Paragraph 11 provides increase of salary of superintendent of meters to $2,100.

An act making appropriations, etc., for District of Columbia, and for other purposes. (Mar. 3, 1883; 22 Stat. L., 462; Supp. R. S., vol. 1, ch. 95, p. 400.)

Provides that steam railroad companies shall pay for lighting streets through which their tracks may be laid.

An act making appropriations, etc., for District of Columbia, and for other purposes. (July 18, 1888; 25 Stat. L., 314; Supp. R. S., vol. 1, ch. 676, p. 597.)

Provides that all fees collected by inspector of gas meters shall be paid into the Treasury.

An act making appropriations, etc., for District of Columbia, and for other purposes. (Mar. 3, 1893; 27 Stat. L., 537; Supp. R. S., Vol. II, ch. 199, p. 109.)

Paragraph 2 provides that gas laboratories be provided—two in Washington—which shall be paid for by the Washington Gaslight Company, and one in Georgetown, to be fitted up by Georgetown Gaslight Company, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gaslight Company, and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gaslight Company: *Provided*, That the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gaslight Company. Prescribes penalty for departure from standard of illuminating power and purity.

Gas-fitting regulations authorized.

Provides for inspection of gas fitting to be appointed at cost of both gas companies.

Provides that daily inspection heretofore authorized, shall be hereafter made at any time between 12 o'clock noon and 12 o'clock midnight.

Provides that gas meters shall be tested whenever heads are removed; that heads shall not be replaced until tested; that fee of 25 cents for each inspection shall be paid: *Provided further*, That each gas company in the District of Columbia shall, at its sole and entire expense, make reasonable extensions of its gas mains whenever the said extensions shall be necessary for maintaining street lamps for the public safety and comfort, and the said commissioners shall regulate the location and depth of the said gas mains in the streets, avenues, roads, alleys, and spaces of the District of Columbia. Any failure to comply with this provision shall be reported to Congress by the commissioners.

An act regulating the sale of gas in the District of Columbia. (June 6, 1896; 29 Stat. L., 251; Supp. R. S., Vol. II, ch. 335, p. 501.)

Section 1. Washington Gaslight Company authorized to collect $1.10 per 1,000 feet for gas after July 1, 1896, and $1 after July 1, 1901; price to United States and District of Columbia to be $1 after July 1, 1896; but if consumers other than Government shall not pay bills within ten days, $1.25 may be charged.

Section 2. Georgetown Gaslight Company to charge $1.35 after July 1, 1896, and $1.25 after July 1, 1901, and $1.25 after July 1, 1896, to Government. May charge $1.50 if bill not paid within ten days by consumers other than Government.

Section 3 defines standard of power to be 25 candlepower and purity of gas. Penalty of $100 for every day's violation unless unavoidable.

Section 4 provides penalty of $100 for every meter used which has not been inspected, proved, and sealed, except when inspector of meters is unable through press of business or accidental cause to test, inspect, and seal same.

SEC. 5. That neither the Washington Gaslight Company nor the Georgetown Gaslight Company shall hereafter issue any greater number of shares of stock than shall be equal to the actual cash value of said plants and necessary cost of construction of future extensions or future enlargement of plants, which cash value and cost of extensions shall first be ascertained and authorized upon petition therefor to the supreme court of the District of Columbia, under such regulations as the chief justice and the justices thereof shall prescribe; also if either of the said corporations shall desire hereafter to issue bonds upon their property, secured by mortgage or otherwise, upon petition therefor to said court, setting forth the necessity thereof and the amount of stock issued and outstanding, it may and shall be lawful for said court, or the chief justice or justices thereof, as the case may be, or one of them, upon public notice, to be prescribed by the rules of said court, to permit the issuance of such bonds and mortgages as desired.

Provided, That the amount of stock and bonds issued shall not exceed the actual cash value of said plants and the cost of such extensions or enlargement of plants:

And provided further, That the Washington Gaslight Company is hereby authorized to issue such additional amount of capital stock as will provide for the conversion into such stock of its outstanding certificates of indebtedness, which conversion of said certificates is hereby authorized to an amount not exceeding six hundred dollars.

SEC. 6. That Congress reserves the right to alter, amend, or repeal this act.

An act making appropriations, etc., for the District of Columbia, and for other purposes. (June 11, 1896; 29 Stat. L., 393; Supp. R. S., Vol. II, ch. 419, p. 251.)

Paragraph 4, that the whole cost of maintaining and keeping in good order the laboratory and apparatus in the office of the inspector of gas and meters shall hereafter be paid by the Washington Gaslight Company.

An act making appropriations, etc., for the District of Columbia, and for other purposes. (Mar. 1, 1901; 31 Stat. L., 822; Supp. R. S., Vol. II, ch. 670, p. 1494.)

Paragraph 3, that the electric and gaslight companies of the District of Columbia shall file with the Commissioners of the District of Columbia on the 1st day of August, 1902, and annually thereafter, a statement showing their receipts and expenditures for the previous fiscal year.

An act making appropriations, etc. (Mar. 3, 1905; 33 Stat. L., 883; ch. 1406, p. 896.)

Provides that hereafter the illuminating power of gas shall be 22 candlepower.

An act making appropriations, etc. Hours of laboratory changed. (32 Stat. L., 63, p. 601.)

An act making appropriations, etc. (Ibid., p. 966.)

Provided, That any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the first day of February in each year. Said report shall contain a detailed statement of the conditions of the business of said association or corporation for the year ending December thirty-first next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public-utility corporations in the District of Columbia, the names of the stockholders, and the amount of stock held in such association or corporation by each of them on December thirty-first next preceding the date of such report.

Any such association or corporation, not later than the fourth day of December in the year nineteen hundred and seven, shall make to Congress a sworn report in accordance with the requirements of this provision and showing the condition of its business as near as its present method of bookkeeping will permit for the year ending December thirty-first, nineteen hundred and six.

An act making appropriations, etc., for the District of Columbia, and for other purposes. (Public, No. 169, approved Mar. 2, 1907, p. 17.)

Senator SCOTT. As I understand you, the House has already repealed that provision?

Mr. THOMAS. Yes, sir.

Senator SCOTT. What is the attitude of the commissioners on this question?

Mr. THOMAS. The commissioners, on my suggestion, advised that the law be repealed, for fear that if a decision was made final, fixing this valuation, an adequate return must be made to the company, and therefore that would absolutely control the price of gas. That is the proposition the commissioners adhere to.

The CHAIRMAN. Mr. Thomas, do you take the ground that it is wrong, either in law or in ethics, to grant to any corporation the right to issue stock and bonds to the fair value of their property?

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SEC. 5. That neither the Washington Gaslight Company nor the Georgetown Gaslight Company shall hereafter issue any greater number of shares of stock than shall be equal to the actual cash value of said plants and necessary cost of construction of future extensions or future enlargement of plants, which cash value and cost of extensions shall first be ascertained and authorized upon petition therefor to the supreme court of the District of Columbia, under such regulations as the chief justice and the justices thereof shall prescribe; also if either of the said corporations shall desire hereafter to issue bonds upon their property, secured by mortgage or otherwise, upon petition therefor to said court, setting forth the necessity thereof and the amount of stock issued and outstanding, it may and shall be lawful for said court, or the chief justice or justices thereof, as the case may be, or one of them, upon public notice, to be prescribed by the rules of said court, to permit the issuance of such bonds and mortgages as desired.

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Any such association or corporation, not later than the fourth day of December in the year nineteen hundred and seven, shall make to Congress a sworn report in accordance with the requirements of this provision and showing the condition of its business as near as its present method of bookkeeping will permit for the year ending December thirty-first, nineteen hundred and six.

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Mr. THOMAS. I do not know. You could tell from the return. I would not like to say positively without looking that up. I do not think it is.

Senator LONG. Did the Supreme Court in a recent New York case, the Wilcox case, include the franchise, or any part of it, as one of the items in making up or determining the property of the company?

Mr. THOMAS. I have not had opportunity to see the decision, except the reports in the newspapers. I have read that they excluded the good will, and I do know that the master did include the franchises in his report. I find that the New York legislature enacted that in the consolidation the capital should not amount to more "than the fair aggregate value of the property, franchises, and rights of the several companies to be consolidated."

Senator LONG. He included the franchises at $12,000,000, did he not?

Mr. THOMAS. Yes; that is right.

Senator LONG. The Supreme Court, in passing upon the question, rejected that valuation of the franchises, but did take the franchises at about, in round numbers, $7,000,000, which was the valuation put upon the franchises of the constituent companies at the time of the consolidation in 1884.

Mr. THOMAS. That is right.

Senator LONG. So the Supreme Court included, as part of the property of the New York company, on which they were entitled to a fair return, the franchises, did it not?

Mr. THOMAS. I think it did; but I want to say right here that there is a marked distinction between including the franchise or any valuation for the purpose of fixing the rate and the mere valuation of the property of the company for the allowance of the issuance of stock. I do not think the questions are allied.

Senator LONG. The New York case was on the question of rate?

Mr. THOMAS. Yes, sir.

Senator LONG. As to whether the price of gas was too low to allow a fair return on the property?

Mr. THOMAS. In Massachusetts and the various other States I think I am correct in saying, although it has been a long time since I have read the statutes, that where cities are allowed to purchase the plants of private corporations operating water, electricity, or gas plants, they have excluded in the statutes themselves the item of franchise as a valuation.

Mr. GOLDSBOROUGH. But they have included its value as a going concern, which amounts to the same thing, does it not?

Mr. THOMAS. I do not think they have done that.

My brief in the Georgetown Gaslight Company's case before the supreme court of the District of Columbia correctly states the statute, I think. The brief says:

> An example of purchase by a municipality is also to be found in Massachusetts. There, by statute, a water company was authorized to sell to a city all of its corporate property, rights, privileges, easements, lands, waters, water rights, dams, reservoir, and appliances owned by that company and used in supplying the city with water. It was also provided by statute that if the water company should elect to sell its property to the city, said city shall pay to said company the fair value thereof, and that "such value shall be estimated without enhancement on account of the future earning capacity, the future good will, or on account of the franchise of said company."

Senator LONG. Suppose Congress should provide for a commission for the valuation of the property and should say to this commission or board of appraisers or other tribunal that the property of the company should be valued.

Mr. THOMAS. I am afraid the word "property" would be a very large expression. It might include franchise. It would leave the question open. I think if you wish to pass a law on that subject it would be better to specifically define the precise thing the commission or tribunal should take into consideration in making the valuation, and then you would not have any trouble about it. Otherwise there would be a great deal of difficulty.

The CHAIRMAN. Will you proceed with the other phase of the question you wish to discuss?

Mr. THOMAS. There is nothing more I wish to say, Senator.

Senator LONG. What have you to say in regard to the pressure bill that has been introduced here and that is also pending in the House, one of the four bills we have under consideration?

Mr. THOMAS. In reference to that, Senator, all I know about the subject is that the commissioners were appealed to by certain citizens of the District of Columbia to require the gaslight company to maintain a certain pressure, the complaints being particularly from Takoma Park.

Senator LONG. Did any complaints come from the interior, the principal part of the city?

Mr. THOMAS. No; I am satisfied the gas company is doing the best it can to maintain the pressure everywhere.

The CHAIRMAN. You have no technical knowledge on that subject?

Mr. THOMAS. I have no technical knowledge. I simply drew the bill on request, and the commissioners sent it forward because those complaints had been made.

The CHAIRMAN. Who is there in the District who is an authority on the question of monoxide and the question of pressure?

Mr. THOMAS. The official is Mr. Runyon, who is the inspector of gas and meters. He was formerly a United States official, but by change of law he is now a District official. If you desire to know about carbon monoxide and pressure, he is the one. If you desire to know in reference to whether the gas fixtures and the like are properly supervised, the inspector of plumbing would be the proper person to send for.

STATEMENT OF R. H. GOLDSBOROUGH, GENERAL COUNSEL, WASHINGTON GASLIGHT COMPANY.

The CHAIRMAN. Mr. Goldsborough, you have been asked to appear as the representative of the Washington Gaslight Company?

Mr. GOLDSBOROUGH. Yes, sir.

The CHAIRMAN. You may proceed in your own way.

Senator LONG. What is your official relation to the company?

Mr. GOLDSBOROUGH. I am general counsel of the Washington Gaslight Company and a member of its board of directors.

Senator LONG. And a stockholder?

Mr. GOLDSBOROUGH. And a stockholder.

Senator LONG. Are you also interested in the Georgetown company?

Mr. GOLDSBOROUGH. I am of counsel for the Georgetown company.

Senator LONG. So you appear for both?

Mr. GOLDSBOROUGH. I appear for both.

If I may be permitted in the outset to say so, it is the hope and desire of the companies that I have the honor to represent that the committee and the Congress will at this session find some way to pass a law that is broad enough to define the rights of the companies and at the same time protect the equities of the people.

I should, inasmuch as it is getting late, be much obliged if I may be permitted to go along with the course of my argument without interruption if questions are to be asked me, unless they are particularly pertinent to the point that I am discussing and therefore could not be well delayed, until after I have finished with the main proposition.

I have represented the company for a number of years and have made in the past a number of arguments before committees in the House and in the Senate; and it has always been somewhat a matter of astonishment to me that the true relation of capital to rates has been so immensely misunderstood. Only a day or two ago, on Sunday last, in fact, I picked up a copy of the Post of that day, which contained an interview with the distinguished chief of the Interstate Commerce Commission, Mr. Knapp, in which he makes this deliverance:

> The Government has no control over capitalization, but we shall have to come to it at some time. In my opinion, however, capitalization has no influence at all on freight rates, neither to put them up nor to put them down. The Erie and the Lake Shore are doing business in northern Ohio and northern Indiana on the same basis of rates, being competing roads, although the capitalization of the Erie is three times greater than that of the Lake Shore. There is much confusion in this country over the words "capital," "monopoly," and "value." Rails would be no cheaper to-day if the United States Steel Corporation was capitalized for five hundred billion instead of five hundred million. Capitalization has no effect on prices, but monopoly has. I should regulate the capital of railroads simply to protect persons who invest their money in railway securities, and for no other reason. Furthermore, I think the roads as a whole are not capitalized beyond their value, etc.

Now, I think I shall be able before I have finished to satisfy the committee that that deliverance is in thorough harmony and, I may say, in tune with every word that has been issued by the Supreme Court of the United States in every decision it has made upon the subject in the last twenty years. I can show the committee that it is not only theoretically correct from a legal point of view but from a practical point of view.

Take, for instance, the case which is familiar to many of you, of the gas company of the city of Cincinnati. It has been said to be the most overcapitalized gas company in the United States, if not in the world, yet it is to-day selling artificial gas cheaper than any other company in this country. Nowhere in this country is artificial gas sold as low as it is to-day in Cincinnati, notwithstanding the fact that it has a capitalization nearly 500 per cent greater than that of the Washington Gaslight Company; they sell it for 50 cents and we sell it for $1.

Senator SCOTT. Do you not think they run a little natural gas in their pipes?

Mr. GOLDSBOROUGH. Well, they sold it for low prices before the advent of natural gas. They may be now doing what you suggest.

I was in Cincinnati six or seven years ago, I think in 1902, and they were selling it then for 75 cents for illuminating purposes and 50 cents for heat and power purposes.

Senator LONG. How are they able to do that?

Mr. GOLDSBOROUGH. Well, coal of course is cheaper there than it is here, and they were working under a statute which I understood enabled them to devote all their time and energies to perfecting the art of making gas cheaply, which they did to unusual perfection.

Senator SCOTT. They have a very large pipe running from West Virginia that carries natural gas into Cincinnati?

Senator LONG. Then that is competition.

Senator SCOTT. No, sir; it is sold by the gas company.

Mr. GOLDSBOROUGH. Senator, was that the case in 1902?

Senator SCOTT. They have been taking gas out of our fields for the last ten or fifteen years. I do not know whether they use it now. I only know it is piped by that company from our State into Cincinnati.

Senator LONG. That is natural gas. That is a different proposition.

Mr. GOLDSBOROUGH. Yes.

Senator SCOTT. I presume they mix it with the manufactured gas. I do not know that. I do not make that assertion at all.

Senator PAYNTER. Has the Cincinnati company been paying dividends to its stockholders?

Mr. GOLDSBOROUGH. The company has always been paying dividends to stockholders and the stock has been increased from time to time from a comparatively small amount to something like thirty or forty million dollars.

The CHAIRMAN. In reference to the price paid in Cincinnati; I have a letter from the mayor of the city, written a little over a year ago. He says that the price is 85 cents a thousand if paid within five days; and for fuel gas, 50 cents; and that they had a ten-year contract.

Mr. GOLDSBOROUGH. At what time was this?

The CHAIRMAN. In August, 1907—about a year and a half ago.

Mr. GOLDSBOROUGH. They have been selling gas, as I understand it, for those prices for a great number of years. The company has been well managed and has been signally successful. It is believed to have had the best plant in the United States, and a straight coal plant. In addition to that, they were not required by law to enrich the product with water gas or with oil gas, which requires large expenditures for oil, by either process.

We see illustrations of the economic principle involved around us everywhere. Take the situation here in town. Here is the Capital Traction Company. The capital of that company within quite recent times has been increased from $500,000 to approximately $20,000,000, but the price of fares is just the same as it always was. The Tennallytown road that adjoins it is capitalized for about $25,000 a mile, against $250,000 or $300,000 a mile in the other case, but the price of the fares is the same, not because they are made the same by law——

Senator PAYNTER. I want to see whether I fully understand you or not. I will assume that the actual cash value of this plant that includes the whole property of the gas company is worth $5,000,000. It is capitalized, though, at $50,000,000?

Mr. GOLDSBOROUGH. Yes.

Senator PAYNTER. Now, you say if it is required to pay a dividend upon that stock it does not affect the price of gas to the people of this city?

Mr. GOLDSBOROUGH. Of course it would, but the Supreme Court has expressly decided, notably in Smyth *v.* Ames (169 U. S., 466, 544), and it was law before they there declared it, that fictitious or watered stock has nothing to do with the question of rates; that it is the value of property used in the conduct of the business that determines the reasonableness of any and every rate.

Why, if you would authorize us to issue ten thousand million dollars' worth of stock against the Washington Gaslight Company's property and you put the price of gas down to 50 cents a thousand or any other rate that the company believed to be confiscatory, what would it be incumbent upon us to do? Would it suffice for us to say that you had allowed us to issue ten thousand millions of stock, and the rate named would not pay 1 per cent on the authorized issue? Why, we would be laughed out of court.

In the Consolidated Case, which the Supreme Court has just decided, I understand Judge Hough, in New York, refused even to hear testimony about what the amount of the stock issue was. The Supreme Court, in its great decision just handed down, which is regarded in certain quarters as a charter of the equities of the people, does not even refer to the capitalization of the company, other than the fact that at some time previous to the institution of these proceedings, some eight or ten years before, the company had made a valuation of its own franchises and had placed that valuation at $7,870,000 upon them, and that from all the evidence in the case that was a fair valuation; and, further, that inasmuch as it was an indisputable proposition that franchises had to be taken into the account in establishing rates, it was not competent, as the Supreme Court decided in the Monongahela Case (144 U. S., p. 312), for Congress to pass an act that would prohibit the valuation of franchises in such a case. Therefore the court accepted that valuation and added it to the valuation of the physical properties, bringing the total value up to $50,000,000 or $55,000,000 instead of $65,000,000, found by the referee.

Senator LONG. The referee finding or holding that there had been an increase since 1884 in the value of the franchises, since that valuation was made, of $12,000,000?

Mr. GOLDSBOROUGH. Yes.

Senator LONG. The Supreme Court rejected that increase?

Mr. GOLDSBOROUGH. The court rejected that upon two grounds. They distinctly said it was all right to appraise the increased value if there was evidence to support it, but all wrong to do it if there was no evidence to support it.

Senator PAYNTER. If it will not interrupt you I would like to ask another question. Suppose Congress should pass a law providing that the company could not receive more than is suggested by Senator Long with reference to the automatic system—7 per cent upon the capital stock—would not the increased capital cut a very material figure in the question?

Mr. GOLDSBOROUGH. They could not increase it beyond the actual value of the property.

Senator LONG. The capital stock, however, not to exceed the value of the property found by some tribunal. That is the proposition.

Senator PAYNTER. I am not talking about this particular case. Take, for instance, an illustration I gave a moment ago, that your property was worth $5,000,000 and the capital stock was increased to $50,000,000, and Congress authorized you to receive 7 per cent upon the capital stock, would not that figure enter very materially then in this question of the price of gas?

Mr. GOLDSBOROUGH. Not at all.

Senator PAYNTER. Where they expressly fix the amount of dividends upon the capital stock, it would not be a question of the value of the property in that case. It would be a question of the amount of stock, would it not?

Mr. GOLDSBOROUGH. Of course the value of the property in such a case, if it was similar to this one, would be the basis for the issuance of the stock, and the two would coincide.

Senator PAYNTER. It has been suggested that the Boston system be adopted? That would take, then, as the basis of the calculation, the capital stock and not the value of the property; and therefore—not in this particular case, but as applying the principle you are discussing, as to whether or not the capital stock would cut any figure as to the cost of gas to the people—if dividends were declared, that question would figure very materially.

Mr. GOLDSBOROUGH. The scale provides that such a dividend may be paid, not that it must be paid. The underlying rate law would be just the same as it is now. If Congress thereafter pleased to pass a bill reducing the price of gas to 50 cents, it would have just as much legal right to do so under those circumstances as it has now. You can not bind a future Congress by anything short of a contract between the companies and Congress. It will become the duty of the company, if it is going to rely upon this act, to show that its capital stock is equal at the time the rate is imposed to the amount of the value of its property. Otherwise it will have no case and would be thrown out of court, as it ought to be.

Senator JOHNSTON. You speak of the value of franchises in the New York case. I know there are some cities that require companies to pay for a franchise, although Washington does not. Did that appear in that record?

Mr. GOLDSBOROUGH. It appears in this record that they acquired their franchises just as we did ours—by grant.

Senator GAMBLE. There was a statute passed in New York some years ago, I think when Roosevelt was governor of the State, whereby there was a valuation placed upon the franchises, and the franchises were taxed.

Senator JOHNSTON. Yes.

Senator GAMBLE. And it resulted in a very great increase in taxes in New York.

Senator LONG. It is stated in the opinion that this valuation of $7,800,000 was the valuation placed on the franchise at the time of the consolidation of the seven companies. These seven companies paid not a penny, the court says, for these franchises.

Mr. GOLDSBOROUGH. None of them.

Senator LONG. They got the franchises without any compensation at all to the city—that is, the seven companies.

Mr. GOLDSBOROUGH. The grantees agreed to make the necessary investments and did make them at their own cost and risk.

Senator SMITH. Yet do I understand that the franchises were included in the valuation of the property?

Senator LONG. In the valuation that was placed on it at the time of the consolidation, as I understand the opinion, in 1884. These franchises, then, of the new company after the consolidation was made were valued at $7,800,000?

Mr. GOLDSBOROUGH. Yes, sir.

Senator LONG. And that valuation was accepted by the court as the present value of the franchises of the company. Is that right?

Mr. GOLDSBOROUGH. That is right.

Senator SMITH. And for which they paid nothing, either in taxes or franchise, or for the franchise itself.

Senator LONG. They paid taxes, but the constituent companies—the seven original companies—paid nothing to the State for their franchises.

Senator JOHNSTON. They paid taxes on the value of the franchises.

Mr. GOLDSBOROUGH. Just as we do here. We pay about $100,000 a year franchise tax. We pay 5 cents a thousand on the product.

Mr. THOMAS. There is no special franchise tax here.

Mr. GOLDSBOROUGH. It is not nominally a special franchise tax, but in effect it is a franchise tax and nothing else.

Mr. THOMAS. I do not think so.

Mr. GOLDSBOROUGH. What is it, then?

Senator CARTER. That is, in addition to the physical value of your property, you say you pay a certain amount upon the production of gas, so called.

Mr. GOLDSBOROUGH. Yes.

Senator JOHNSTON. How much do you pay on your physical property?

Mr. GOLDSBOROUGH. We will pay altogether, I think, this year about $130,000 or $135,000 on a capitalization of $2,600,000, which is pretty conclusive proof that there is something wrong with that capitalization scheme.

Senator GAMBLE. That is made up of the $100,000, and then in addition to that you will pay $30,000 on the physical property?

Mr. GOLDSBOROUGH. On the so-called real estate.

Senator GAMBLE. Are there two distinct taxes?

Mr. GOLDSBOROUGH. Everything physical the company owns is taxed as real estate, even to the mains in the ground.

Senator CARTER. And then, supplementing the taxation on all tangible property——

Mr. GOLDSBOROUGH. Of every kind.

Senator CARTER. You pay a tax upon the total production of gas?

Mr. GOLDSBOROUGH. Yes; on the total amount sold.

The CHAIRMAN. You pay 5 per cent in taxes, do you not?

Mr. GOLDSBOROUGH. Five cents a thousand on the entire number of thousands of cubic feet of gas sold. The railroads pay 4 per cent and the gas company pays 5 per cent of total receipts in lieu of personal taxes.

To go back to the matter of franchises, since it has been called in question, here is what the Supreme Court says in its latest deliver-

ance on this subject. I may add it is what it has been saying for thirty years, but somehow or other a great many people would not and will not believe it.

Senator LONG. What case is that?

Mr. GOLDSBOROUGH. It is the New York Consolidated Gas case.

It can not be disputed—

That is to say there is no longer room for doubt or debate about it—

that franchises are property and can not be taken away or used by others without compensation.

Now, what does that positive declaration mean? Can language be broader or clearer? This decision I have already characterized as a great decision. It has been construed to be for the most part strongly against public-service companies, but I do not think so. I think it is in the public interest, and the public interest and the interest of the owners of public utilities is one. Whatever inures to the benefit of the one must in the course of time inure to the benefit of the other.

The court goes further than it has ever gone before in this case in certain other directions. It takes up the reasoning of Judge Hough in the court below as to what constitutes value in franchises, and intimates that the measure of valuation ought not to be too amply stated or construed, and I for one agree with them in that. They say that practically heretofore franchises have been predicated, as in the case under review, upon the earning capacity, at probably excessive rates, and that that is not equitable. We are not here to deny that proposition. It should be predicated upon legal rates, rates founded upon a just consideration of the equities of the public as well as the rights of the corporation; and one reason for my thankfulness for this decision is that it is so broad in treatment that its protection extends over everybody in interest.

I want to call your attention to another thing. In this case, as in the case of Gibbons *v.* Mahon (136 U. S.), and in other cases which I can cite you from the Supreme Court decisions, there is a complete annihilation of the entire argument that has been built up so ingeniously upon the theory that there is a legal and moral difference between betterments built by undistributed profits and betterments built by borrowed money—a theory that looks plausible at a distance, but upon close inspection proves to be a pure figment of the imagination. It would be strange indeed if any justification could be found in law for a doctrine that denounces sound business methods in theory and penalizes prudence in practice.

The Supreme Court, in its unanimous opinion in this case, also disposed of Judge Hough's personal views, sustaining him in overruling his own convictions, as follows:

The judge stated his own views were opposed to including franchises in the property upon the value of which a return is to be calculated, but held that he was bound by decided cases.

There is not a word of suggestion in this great case that the valuation of franchises is in any way impaired by their relation to betterments derived from undivided profits. And nobody can show any reason, and there has been no attempt to show any by anybody that

I know of, why, if the company is entitled to make earnings on franchises or any other kind of property and distribute them, it should not be entitled to capitalize them.

Bearing this steadily in view, we can readily understand why the court goes on to say:

> We are not prepared to hold that the court below erred as to the increased value attributed to these franchises. It is too much a matter of speculation, but we think, also, it is opposed to the principle upon which such valuation should be made.

What principle? Let the court answer:

> The franchises granted to various companies and held by complainant consisted in the right to open the streets and to lay down mains and to use them to supply gas, subject to the legislative right to regulate the price for gas, so as to permit not more than a fair return, regard being had to the risk of the business, upon the reasonable value of the property at the time of its being taken or used for the public.

That is the rule the Supreme Court lays down here in this case. Franchises are not to be capitalized upon enormous past earnings or upon the theory that they have increased pari passu as the real estate has increased in value, which was the theory propounded by the distinguished judge below, or as the business has been increased or as the population of the city has grown. Not at all; but they must be estimated upon the theory that the companies have a legal right and privilege granted them by law of selling gas, if it is a gas company, or railroad fares, if it is a railroad company, at such rates as will yield a reasonable profit whether those rates are voluntarily established or established by law.

Senator BURKETT. I read the case very carefully, and, as I remember, the court held this way—that even allowing the franchise to be something of value, still that added to the cost of the plant; that they were still getting a reasonable income.

Mr. GOLDSBOROUGH. Yes.

Senator BURKETT. That is the way they decided it, but even allowing that, they still were getting an income.

Mr. GOLDSBOROUGH. No; they did not do that. They said, point-blank that franchises ought to be valued and were valued, and they accepted that valuation, although the company had in the past, it was claimed, been in the receipt of excessive rates, and that it built itself up upon those rates.

Senator CARTER. In order to economize somewhat on time, I desire to ask a question at this point. Mr. Goldsborough, your argument seems to be directed to the question of the value of the property, and that argument is doubtless proceeding upon the theory that some act is to be framed or some bill is to be prepared looking to the valuation of property. I presume that is the thought you had in your mind?

Mr. GOLDSBOROUGH. I was arguing on the line suggested by my brother Thomas, as to the wisdom of repealing section 5 of the act of 1896, upon the ground that that act was not in the public interest, in that it possibly permitted the capitalization of franchises and betterments derived from undivided profits.

Senator CARTER. The constitutionality of that act is now a question pending in the courts, as I understand it.

Mr. GOLDSBOROUGH. In the Supreme Court of the United States.

Senator CARTER. Assuming that some bill is to be prepared to take the place of that act, in the event of its repeal, thus at once settling

the question before the court by the repeal of the law under consideration and the substitution of another for it, I understand your contention to be that even if the Congress should specifically exclude the value of a franchise from consideration in the estimation of the value of the property in a rate case such exclusion would be ineffectual for any purpose?

Mr. GOLDSBOROUGH. I do.

Senator CARTER. But that under the rule of law as construed by the courts——

Mr. GOLDSBOROUGH. The Supreme Court.

Senator CARTER. The Supreme Court—the commission or appraisers would be required to take into consideration the value of the franchise, even though we specifically excluded it from consideration?

Mr. GOLDSBOROUGH. I do, in a proceeding to determine the validity of a rate.

Senator PAYNTER. In that connection, suppose Congress should pass a law authorizing you to increase your capital stock to the actual value of the physical property. Would you say that because they did not authorize you to increase an additional sum equal to the value of the franchise that act would be invalid?

Mr. GOLDSBOROUGH. Oh, no.

Senator PAYNTER. It is entirely optional, is it not, whether Congress shall give you that permission?

Mr. GOLDSBOROUGH. It is entirely optional whether they give permission to capitalize on paper; but it is not optional with Congress whether we shall actually capitalize or not in effect. We are actually capitalized now in effect to the value of this property, for all rate purposes. This is precisely what the Supreme Court said in Gibbons *v.* Mahon. Let us see just what it did say:

> The accumulated earnings were kept undivided and actually added to the capital of the corporation by investing them from time to time in its permanent works and plant.

Mark you, for the full value of it.

Senator PAYNTER. For the full value of it now?

Mr. GOLDSBOROUGH. Just as we are capitalized, for the full value of it now, by operation of law. If you were to pass a law with reference to the rate——

Senator JOHNSTON. Why are you proceeding to enlarge your capital?

Mr. GOLDSBOROUGH. I am not proceeding to enlarge the capital, but I will tell you the theory upon which the act of 1896 was based, and it was one of the wisest and most far-reaching and foreseeing acts ever passed by Congress.

Senator LONG. But it has been declared unconstitutional by the court of appeals.

Mr. GOLDSBOROUGH. By the court of appeals. Well, that was not upon the merits of the matter.

Senator LONG. It was upon the ground that Congress did not have authority to confer such powers on a judicial tribunal.

Mr. GOLDSBOROUGH. I understand; but it did not go to the merits of the act.

Senator PAYNTER. Evidently the position of the gas company is misunderstood by some members of this committee, because yesterday, and also perhaps this morning, it was suggested by a member of the committee that the gas company was anxious to have this legis-

lation, increasing the capital stock, so as to settle the constant agitation about the price of gas.

Mr. GOLDSBOROUGH. No; not alone upon the price of gas.

Senator PAYNTER. It was stated that that would settle this question because it would then fix a proper amount upon which dividends should be declared. I understood a member of the committee to give that as his impression of what the gas company wanted.

Mr. GOLDSBOROUGH. That does not contravene my proposition at all.

Senator CARTER. Mr. Chairman, I understood the chairman of the subcommittee, Mr. Long, had sketched a proposed act or bill looking to the accomplishment of a number of purposes. Another was the elimination of a poisonous gas, monoxide, the reduction of certain elements in the preparation of the gas or its production, which resulted in this monoxide poison. Another is the increase of capitalization to the value of the property, with a view, as I understood the chairman, to the establishment of a sliding scale of decreasing prices——

Senator LONG. First, of a maximum dividend.

Senator CARTER. A maximum dividend and a reduction of the price of gas, if that dividend was increased at any time, or if there was a certain reduction in the cost of gas to the consumer, a premium was to be allowed to the company to increase its dividends. On the basis that the chairman had in contemplation an actual valuation of the property would be essential, and the issuance of stock to the extent of that valuation as ascertained would be necessary for the accomplishment of the purpose the Senator had in view, and the arrangement of this automatic reduction in price and resultant increase in dividends.

Senator LONG. Yes.

Senator SMITH. But suppose, Senator, the dividend was not increased and the amount earned was put to surplus. How then? What would be the result further on? That surplus would be held. They need not increase the dividends, need they? They could put it to surplus and then give a certain amount of dividends.

Senator CARTER. The public can not be concerned in that if they get a reduction in the price of gas.

Senator SMITH. But if the price of gas were hinged upon the dividends and they did not increase the dividends, then they would not increase the price of gas. They might make the money and not pay it in dividends.

Senator LONG. That would be a question of detail.

Senator SMITH. Yes. I merely mention that. They might earn more money and they might not give it to the stockholders, but put it to surplus. I have not made up my mind about it at all, but they might increase the earnings of the company and yet they might not increase the dividends, and therefore the price of gas would not decrease.

Senator CARTER. I should think it might be well to cover that by providing that when the earnings of the company, whether declared in dividends or passed to surplus, exceeded 7 per cent——

Senator SMITH. I say if you put it upon dividends solely they might earn it and not put it in the dividends.

Senator LONG. I submitted to the subcommittee what is known as the Massachusetts law as a basis for our consideration.

Senator SMITH. I understand. Of course, those are details to be worked out.

The CHAIRMAN. You may proceed, Mr. Goldsborough. I think you ought not to give much more time to the question as to whether franchises are properly appraised in estimating the value of a plant of property of a corporation. I have an impression that the uniform decision of the Supreme Court is that franchises are a part of the property of a plant. Am I correct or not?

Mr. GOLDSBOROUGH. You are correct.

The CHAIRMAN. In the Monongahela case, for instance, in 1892, Justice Brewer said:

"Our conclusions are that the navigation company rightfully placed this lock and dam in the Monongahela River; that the ownership of the tangible property being legally held in that place, it has a franchise to receive tolls for its use; that such franchise was as much a vested right of property as the ownership of the tangible property."

Has that ever been reversed by the Supreme Court?

Mr. GOLDSBOROUGH. Never.

The CHAIRMAN. I think we had better dismiss that. If we see fit to do so, we can provide in the bill that the franchise shall not be considered a part of the property, and trust it to the courts to decide it, but I do not believe we can decide it here. Manifestly the Supreme Court believes that franchises are property.

Mr. GOLDSBOROUGH. The Monongahela case was a case where Congress had expressly prohibited the valuation of the franchise.

Senator LONG. I wish for the convenience of the committee, Mr. Goldsborough, you would include in your statement that opinion from which the gentleman has just read and a New York case (111 N. Y., p. 1) that is cited by Justice Peckham in this New York decision.

Mr. GOLDSBOROUGH. I will do that. In that case, The People *v.* O'Brien, the court held that franchises were not only property but the highest kind of property, and that to hold otherwise would operate as a national calamity. I will also analyze, if time permits, the celebrated case of Williams *v.* Western Union Telegraph Company, in which, if I may be permitted to say so, Senator Root greatly distinguished himself. It is considered among lawyers, I believe without exception, one of the ablest arguments ever made outside of the Supreme Court, and the opinion is the leading one on the subject.

Senator LONG. If you will put those cases in the record, we will have them in proper form.

Mr. GOLDSBOROUGH. I will do so later on.

Senator PAYNTER. I want to make a suggestion by making this inquiry. It is not probable that Congress will ever repeal the charter of these gas companies, but suppose a case where the capital stock is increased and Congress authorizes in that increase the right to estimate the value of your franchise, and it is valued, say, at $2,000,000, and stock is issued to represent that $2,000,000, and Congress repeals the charter. Then the people holding that stock, if it is not put upon the market and sold, would participate in the actual property which was left to the company after repeal.

Mr. GOLDSBOROUGH. Yes, sir.

Senator PAYNTER. So in that way Congress could absolutely destroy that which is estimated to be property?

Mr. GOLDSBOROUGH. By condemnation.

Senator PAYNTER. You say Congress could not repeal the law?

Mr. GOLDSBOROUGH. Not at all. Not without compensation.

Senator PAYNTER. I do not know what the law is in the District, but I think in every State in this Union you have a right to modify charters or to absolutely repeal them, but of course you can not, by doing that, take the property. The franchise, however, is destroyed. I understand Mr. Thomas made the statement that there is a provision in this charter in which Congress reserves the right to repeal these charters.

Mr. GOLDSBOROUGH. Undoubtedly.

Senator PAYNTER. And then you say that these people would have to pay for the value of these franchises?

Mr. GOLDSBOROUGH. Undoubtedly. The Supreme Court has decided that over and over again. In its very last decision it cites with approval The People *v.* O'Brien (111 N. Y.) where the court flatly denounces any doctrine to the contrary as repugnant to justice and reason. In my brief I will completely cover this proposition.

Senator PAYNTER. I am entirely familiar with the Dartmouth College case.

Mr. GOLDSBOROUGH. That is a leading case.

Senator PAYNTER. In nearly every State in the Union they have put in the constitution or the laws that there should be read into every act of the legislature, whether the right was reserved or not, the right to repeal or modification.

Mr. GOLDSBOROUGH. That is a different matter.

Senator LONG. You will present a brief to the committee on that proposition, Mr. Goldborough?

Mr. GOLDSBOROUGH. Yes.

Senator LONG. I would like, before we close the hearing to-day to get your views on the suggestion made by Senator Carter as to the practicability of Congress fixing the price of gas as the House has fixed it; either that or some other rate, then providing for the valuation of the property of the gas company, repealing this section 5, creating another tribunal, and the kind of tribunal that should be created, and the valuation of the property; then permitting the company to increase its capital stock to the value of the property as found by that tribunal, fixing a standard of dividends to be paid on that capitalization, and providing for a reduction in the price of gas below the figure fixed in the law, if there is an increase in dividends. I would like to have your views briefly on those points.

Mr. GOLDSBOROUGH. The sliding scale was established in England, as I remember it, about twenty-five or thirty years ago. It was the greatest advance in public utility management and regulation of the century. It contributed more and is contributing more to-day to the industrial development of England than any other one factor.

In England gas is considered a hazardous business, and the companies are permitted to make an earning of 10 per cent. The prices of gas are regulated up and down by a sliding scale. They have to make reports to a commission, and the prices are thereupon raised or reduced. Under the benign influence of this sliding scale you can buy gas in England as low as 30 cents a thousand in the industrial centers. That is lower than the actual cost of gas in the holder here. The reason of it is that the energies of the people there who manage

these companies—it is considered a reputable business in England—are actually devoted to the perfection of the art; and I may add that over there they even make knights of those who distinguish themselves like Sir George Levesey, who died quite recently, who perhaps did more to illuminate humanity, if I may say so, from a gas point of view, than any other man who ever lived, excepting only Murdoch. Over there the companies devote all their time and talents to making cheaper and better gas all the while. They have developed perfectly the art of disposing of the by-product, until at Leeds and Sheffield the coke that comes out of the oven is worth more than the coal that goes into it, and gas itself is a by-product. Factories are built up all around from their enormous supplies of coke, for metallurgic purposes and every other purpose. Where the sliding scale has been tried in this country—in Boston—the companies have voluntarily, within two years, reduced the price of gas about 15 per cent, I understand. They are now selling gas at 80 cents.

Senator LONG. It was reduced from how much, 85 or 90 cents?

Mr. GOLDSBOROUGH. From $1. They have gone to work and done what an ordinarily prudent business man would do. They have relieved themselves from the odium we want to be relieved from. That is why we want capitalization. It is to escape the odium of declaring enormous dividends upon a nominally small capitalization, when in point of fact we are declaring small dividends upon an enormously valuable and undercapitalized property. We have a capitalization of $2,600,000, with over four times that amount of property by any honest appraisement.

Senator BURKETT. You have bonds, though?

Mr. GOLDSBOROUGH. I mean exclusive of bonds; the stock reflects nearly that value. For ten years that stock has been selling for over 300 per cent above par. Why? Because it is well known among investors that it has property equal to that back of it.

Senator PAYNTER. What is the market price of it now?

Mr. GOLDSBOROUGH. About $70 a share.

Senator BURKETT. Do not the dividends regulate the price of your stocks?

Mr. GOLDSBOROUGH. Our regular dividends are $2 a year. That is about 3 per cent on the market price.

Senator PAYNTER. I picked up a copy of the Post this morning to look at the quotations. I thought the stock of the Washington Gaslight Company was quoted at 110, or somewhere along there.

Mr. GOLDSBOROUGH. No, sir; the par value is 20 and it is selling at 70.

Senator PAYNTER. Oh, yes; it is $20. I beg your pardon. That is what misled me.

Mr. GOLDSBOROUGH. We would like, and we believe it is in the public interest, that the rights of this company should be fairly adjudicated and at the same time the rights and equities of the people should be fairly protected and preserved. We do not want anything that is not reasonable. We are satisfied with a much less rate of profit than any other public utilities enjoy. To-day we pay more taxes by 100 per cent than other public utilities in the District of Columbia, and make a lower per cent of profit.

Senator BURKETT. You say the property is worth $8,000,000?

Mr. GOLDSBOROUGH. Yes. More than that.

Senator BURKETT. But that taxation of $30,000, at a cent and a half, would only indicate that you were worth $2,000,000. Is the rest of it franchise?

Mr. GOLDSBOROUGH. Not at all. Real estate is only taxed 1 per cent. Upon the franchises we pay $100,000 taxes, in round numbers, yearly. Of course, all of this property that we have is valuable for our business, but it would not be right to tax a main in the ground for more than a nominal sum if you did not consider that we had a franchise. If you did not consider that we had some rights which the courts would respect, and that Congress would respect, with reference to the continuation of the business, it would be old scrap. It would not be worth taking out of the ground. Why, it is proposed here to practically render valueless three or four million dollars' worth of property; and I will say right now that the company is willing to have that done if the committee thinks that the gas here is not good gas; that it does not properly safeguard the interests of the people. We are making no factious opposition whatever to that proposition.

Senator BURKETT. If the amount of the capital stock makes no difference in the amount of your profits or dividends that would be sustained, why are you in the courts trying to raise the capital stock?

Mr. GOLDSBOROUGH. I have already answered that question, but I will answer it again.

Senator BURKETT. I have been watching for that answer, because the first part of your argument I thought was very strong; that it did not make any difference what the capital stock was as to the amount of dividends to be sustained.

Mr. GOLDSBOROUGH. Certainly.

Senator BURKETT. Then why are you concerned in raising it?

Senator PAYNTER. I do not think there is the slightest doubt, Senator, that in proceedings to determine a railroad's rates, where a legislature has passed a law fixing the rates, it is not a question of the capitalization that will determine the value of that property, because they can go into the questions of the actual value of it.

Senator BURKETT. I understand that.

Senator PAYNTER. I understood that was the point he was making.

Senator BURKETT. Yes; he did make it, and I want information on the other point. Why are you trying to raise the capital if the capital does not make any difference on the amount of dividends you can sustain yourself on in the courts?

Mr. GOLDSBOROUGH. I will again answer that frankly, because our real and our nominal capitalization do not coincide. The result of which is that we are met here everyday by the proposition, and we are met almost everyday in the streets and in the public press by the proposition that we are making enormous profits, indefensible profits, because we are distributing $2 a share on stock that had a par value of $20 a share written on the face of it fifty years ago, that is now and for ten years past has been worth on an average in the open market over 300 per cent more than that sum.

Senator LONG. That equals about what per cent?

Mr. GOLDSBOROUGH. The stock to-day is worth $70, and has been for a long time worth on the market from $60 to $70. In point of fact we are paying regular dividends upon it of about 3 or 3½ per cent. Yet we are met face to face all the time with public clamor and public odium, which will not recognize the fact that we have

immense values back of that $2,600,000 of capital stock in the shape of property.

Senator LONG. Your dividends amount to about what per cent on the par value?

Mr. GOLDSBOROUGH. On the par value, 10 per cent.

Mr. SMITH. But Mr. Goldsborough claims it is about 3 per cent on the actual value.

Mr. GOLDSBOROUGH. That is it.

Senator PAYNTER. If it will not interrupt you, I would like to know in that eight millions what value you place on this physical property and what upon the franchise?

Mr. GOLDSBOROUGH. There is more than eight millions of the physical property, to say nothing of the franchise.

The CHAIRMAN. So that if a man should buy a share of stock in the Washington Gaslight Company at the present market price, he would be getting about 3 or 3½ per cent on his investment?

Mr. GOLDSBOROUGH. A little over 3 per cent on his investment.

Now, it is just as well to broadly consider the merits of this matter of capitalization. We hold, and we think the Supreme Court sustains the view, that the ideal thing is true capitalization. Anything else is a lie, and no lie represents an economic theory, fact, or condition. It is just as much a lie to say that a million dollars worth of property is only worth $100,000 as it is to say that it is worth $2,000,000 or $5,000,000, and it is just as evil in its effect upon the public interest.

I am not here to defend watering stocks. I say it has nothing to do with the rates, but there are public interests other than rates. Among them is service. You can pile up stock so high that it will affect the public service, the thing that the people pay for. It will put the directors in the management of the property to scrimping and scheming, looking around to make dividends, and all that sort of thing. That is one of the evils of it. On the other hand, there is a kindred evil in undercapitalization. It begets extravagance, and leads to unfair and unjust assessments for the purposes of taxation.

Senator PAYNTER. You say the value of the physical property is $8,000,000?

Mr. GOLDSBOROUGH. It is more than $8,000,000.

Senator PAYNTER. Now, your capital is $2,600,000 and your certificates are $2,600,000?

Mr. GOLDSBOROUGH. Yes, sir.

Senator PAYNTER. And then a bond issue of about $500,000, or has that been paid off?

Mr. GOLDSBOROUGH. Six hundred thousand dollars.

Senator PAYNTER. That would be somewhat less than $6,000,000, would it not?

Mr. GOLDSBOROUGH. It would be just $5,800,000.

Senator PAYNTER. Has this property cost the company $8,000,000, or how do you conclude it is worth $8,000,000, when you have expended presumably $6,000,000 in constructing the plant?

Mr. GOLDSBOROUGH. I will answer that question in this way. It has already been answered in the Supreme Court in a case that went up from this District.

Senator PAYNTER. I am talking about your particular case.

Mr. GOLDSBOROUGH. I am going to answer it. It has already been answered in our particular case, in Gibbons *v.* Mahon, which I

have already cited, a case that went up from the district to the Supreme Court of the United States, in an opinion delivered by Justice Gray. But I will first tell you what the facts are. These gas companies started business about sixty years ago, with a very small capitalization. The railroads did the same thing. All of them were small capitalizations. Washington was a village. The early promoters of the proposition, like pioneers in everything else almost, lost their money. It was all sunk. That fact is lost sight of in the popular mind, but it is a fact, nevertheless. The art was not perfected. After doing business at a loss, although they got $8 a thousand for gas—the gas was 100 per cent less efficient than gas is to-day—they went by the board. So in about six or seven years, along about 1854, they reorganized the company, there being nothing prohibitory in their charter in regard to that, and proceeded to install a coal-gas plant, and they ran along with that plant until the war.

The Washington Gaslight Company is to-day paying more taxes than the total receipts of revenues in the District of Columbia amounted to in the year it was chartered. Beginning with the time of the war, the business began to prosper as the community prospered. Its property grew in value. The real estate upon which its holders were placed, and other things, grew in value, and from time to time and all the time some of its profits were put into the ground and in the plant, and there they have been working at compound interest ever since. My brother Thomas thinks diverting earnings in this way is reprehensible conduct and against public policy and should be denounced and prohibited. But I can not believe that any of you as men of affairs familiar with conservative methods, will agree with him about that. At any rate the Supreme Court of the United States does not, for by a unanimous decision it has expressly approved of and given its high sanction to the course this company pursued in capitalizing a part of its profits in precisely that way.

From time to time the capital was increased. At no time did it ever equal the physical value of the property for the business for which it was used. It could not be valued in any other way. The gas company prospered and financially grew, just as the individual capitalist grows, as did Mr. Corcoran, for example, who bought for a few cents a foot that magnificent corner where the Riggs Bank now stands. It is worth $200 a foot to-day. It grew. Is a corporation not to have the privilege of growing? Is it to be confined to its baby clothes all its lifetime? Can it serve the public by tying its hands and feet and going naked of financial clothing? Not at all.

So the company grew, and from time to time the honest fact is that moneys derived from the profits of the business were invested in betterments, just as it was in New York, just as the Supreme Court says here it was done in New York, just as the Supreme Court aptly described and commended in our own identical case, above mentioned.

The CHAIRMAN. Mr. Goldsborough, we will have to postpone this hearing for to-day. I am going to ask you, however, a plain question, which you may answer or not, as you please.

Mr. GOLDSBOROUGH. I will answer any question, with pleasure.

The CHAIRMAN. Representing the Washington Gaslight Company, and presumably reflecting the views of that company, what do you say to legislation that would include a reduction in the price of gas

either to the amount of the House bill, or less or more, to a provision that would give you the right to have the value of the plant ascertained, that would include the Boston scale, or, as it is properly known, the London sliding scale for gas—and I will say to the committee that I will have printed as a Senate document an article by William E. Marks, who is the best authority, I think, upon this subject in the world—and that would provide that you should change over your plant so as to make a coal-gas plant of it, getting rid of the monoxide gas, if you were given a reasonable time within which to do it? That is a big question and involves several propositions. Are you prepared to suggest to the committee what attitude your corporation would take on legislation of that kind?

Mr. GOLDSBOROUGH. The company would not antagonize that proposition. The company is satisfied that the Congress is not going to impose upon it—it never has done so—any unreasonable burden. The company is perfectly satisfied that it is the intention of the committee and all the members of the committee to deal fairly with it; and the company will make an effort to carry out the committee's will and the will of Congress honestly.

The CHAIRMAN. How long would it take the company to change its plant from a water-gas plant to a coal-gas plant?

Mr. GOLDSBOROUGH. It will take probably a couple of years. It would be a progressive proposition.

The CHAIRMAN. You would make a larger proportion of coal gas as you went along, until you reached the maximum?

Mr. GOLDSBOROUGH. Yes, sir.

The CHAIRMAN. What would be the approximate cost of making the change? It was stated by one witness in the House, and it seemed to me it was extravagant, that it would cost six or seven million dollars.

Mr. GOLDSBOROUGH. I will say that I have not carefully gone over those calculations, but I think they were based upon the fact that the company would have to purchase additional real estate, and that that valuation would include the valuation of property eligibly situated for this purpose. The company has a great deal of real estate. I doubt very much myself whether it would be necessary to acquire more for the present.

The CHAIRMAN. Would a million dollars probably do it?

Mr. GOLDSBOROUGH. No, sir.

The CHAIRMAN. Two million?

Mr. GOLDSBOROUGH. No, sir. I think probably three million or three and a half million dollars would construct a ten million manufacturing plant sufficient for the present; but whatever it is, if it is the will of the Congress that we should install such a plant, it will be installed.

Senator BURKETT. Could you not install a whole new plant for three and a half million dollars?

Mr. GOLDSBOROUGH. Not of our capacity. You see we make over two thousand million feet of gas a year.

Senator BURKETT. That is evidently more than your plant cost?

Mr. GOLDSBOROUGH. Oh, no; our real estate is worth that much.

The CHAIRMAN. You know, Mr. Goldsborough, there is an intense feeling in the District on this question of monoxide gas.

Mr. GOLDSBOROUGH. I do.

The CHAIRMAN. A gentleman who has been agitating the question of the lower price of gas said to me yesterday, and he is quite an agitator, that for the present at least he would throw up his hands and say he did not care for any further legislation, if we could only get rid of monoxide gas. I suppose you have complaints on that subject?

Mr. GOLDSBOROUGH. Oh, yes; we hear from it.

The CHAIRMAN. That is the question I want to have answered in the record, as to the attitude your corporation would take on that proposition.

Mr. GOLDSBOROUGH. The company would like very much to get into harmonious relations with Congress, with the community, with the Commissioners, and everybody, as a result of just and fair legislation, whatever it may cost to make this improvement or any other improvement. This year the company has expended three or four hundred thousand dollars for betterments. Whatever it costs, if this act is passed, the company could be authorized to make the expenditure by applying to the courts, or to the commissioners, for authority. They have to get authority to install the plant, and there could be inspection of the bills, and all that sort of thing, to see that there is no water scheme worked upon the community in the installation.

Senator BURKETT. Was all of that three or four hundred thousand dollars which was expended for betterments this year out of profits?

Mr. GOLDSBOROUGH. Yes; out of profits and surplus, every dollar of it.

The CHAIRMAN. What have you to say as to the management of the Washington Gaslight Company in the matter of economies and good business administration; anything?

Mr. GOLDSBOROUGH. I believe the company has always enjoyed the reputation of having wise and excellent management. I believe a great deal of its prosperity is due to the fact that the very first business men of Washington have been connected with it from its inception, men like Mr. Corcoran, Mr. Riggs, Mr. Glover, and I might name a long list of the most distinguished of our people.

The CHAIRMAN. Do you buy for cash, as a rule?

Mr. GOLDSBOROUGH. We discount our bills. Everybody knows that we are good for them. We buy large quantities. We buy $300,000 worth of oil a year, and at least that much coal a year. It is all bought in advance and bought upon the very best possible terms. The company, I will say further, has always been conservative and prudent, but provident and beforehand in its management. We have never suffered from strikes. When the great coal strike came on two or three or four years ago, that did so much havoc with other gas companies, we were found with our yards full of coal. We did not have to buy a pound. We did not raise the price of coke, as was done elsewhere to 400 or 500 per cent, and I may say for the company that nobody wanted coal or coke who did not get it, whether they had money or not.

Senator JOHNSTON. Mr. Chairman, I will ask to have put in the record the cost of this plant, so far as Mr. Goldsborough has it, what the physical property is, the items of it.

Senator LONG. Mr. Goldsborough, has the report of the corporation to Congress for this year been made?

Mr. GOLDSBOROUGH. The report will be submitted to-day or to-morrow. It is being made out.

Senator LONG. Would it not be a good idea to have that included in this record?

The CHAIRMAN. Yes.

Senator LONG. As soon as possible, we would like to have the items of that incorporated in this report.

Mr. GOLDSBOROUGH. Does the committee desire that I shall furnish a brief? I have prepared a brief for use in the argument this morning.

Senator LONG. It does. Let it follow right along.

Mr. GOLDSBOROUGH. Having now passed through colloquial breakers into the normally still waters of consecutive statement, perhaps we shall find argumentative navigation both calmer and clearer.

Word of general import in a statute will always be broadened or narrowed by construction, as the case may require, to make their definition coincide with the true intent and meaning of the Constitution of the United States in this District.

In the case now pending before the Supreme Court of the United States, instituted by the Commissioners of the District of Columbia for the purpose of invalidating, upon the ground of unconstitutionality, the 5th section of the act of 1896—which it is proposed that you shall here and now repeal—my learned brother Thomas impeached the act in the court below not only on account of its alleged unconstitutionality, but because of certain verbal infirmities which he claimed rendered it obnoxious to the public interest. One of these so-called defects consisted in the authorization of an appraisement, by the court, of the company's "plants." Under which term he was apprehensive the court might include things outside of the factory walls, notwithstanding his contention that the word when correctly defined was and is the narrowest in the legal vocabulary to express properly. And paradoxical as it may seem, the act was then and is now most vigorously assailed on account of this narrowness, which apparently ought to have logically recommended it to his clients? Why? I will tell you. It was because he could not escape the conviction that the court in the last analysis would be compelled to construe it, in order to give it a meaning consistent with the fundamental law, as broad enough not only to include betterments of all kinds, real estate of all kinds, meters, mains, apparatus and physical fixtures of all kinds used in the conduct of the business, but the company's intangible assets of every description including of course franchises, without which all else would be practically valueless.

In effect, Mr. Thomas argued that if the Congress intended to include franchises it should have used the word "property" and not "plant" all through the act. Our argument, the argument of counsel for the company, was then as it is now, that words are of little consequence when things are to be considered. That no matter what the word was that happened to be used to define the attitude of the legislative mind as to what it was or is that was or is to be included in a fair appraisement or valuation intended to form a basis upon which to predicate rates, when the act itself comes before a court to be construed the fundamental law attaches a meaning to it from which there is no divorce. And even though no word be used, if the act be as silent as the proverbial tombs, the law will write into it by

construction apt words to express what has been held for nearly thirty years by the Supreme Court of the United States to be the law of the land—what has been so clearly and conclusively reaffirmed in their last decision on the subject—the indisputable proposition that franchises are property and can not be either taken away, given away, or used by others in any case without just compensation. Even though Congress should affirmatively deny this proposition, as it did in the Monongahela Navigation case, affirming now and here as it did then and there a contrary one by expressly prohibiting such a valuation, the law of the land will inscribe it nevertheless, irrevocably between the lines, that franchises are property and must be inventoried and taken into the account as property when a juridical valuation is to be made for the purpose of measuring the reasonableness of any challenged rate. Let us for a moment look at the great decision delivered by Mr. Justice Brewer in the celebrated Monongahela case, which was distinguished by citation as the leading case in the recent New York Consolidated Gas case.

Speaking for a unanimous court (p. 328), Mr. Justice Brewer said:

> We are not, therefore, concluded by the declaration in the act, that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property. * * * before this property can be taken away from its owners, the whole value must be paid; and that value depends largely upon the productiveness of the property, the franchise to take tolls.

My learned brother was driven by the exigencies of his case to admit this to be the law as to rate regulations or condemnations, not only in his arguments before the courts, but in his argument before the committee when this matter was up last winter, and has just done so here—conceding that all corporate assets, tangible and intangible, expressly including franchises, were and are property upon which the company has a right to make and distribute reasonable returns. Property which not even Congress can take away, either directly by exercising the right of eminent domain or indirectly by the regulation of rates, without just compensation. Therefore, if this be true, I repeat, as to rates, then in the name of all that is real and righteous, why should not all things passing under the name of property (including franchises, which have been held to be the most sacred kind of property), upon which the company has a right to make earnings—why should not all elements of value, including franchises, I reiterate, as a matter of public policy, as well as of corporate right—be capitalized at their actual cash value, as the act of 1896 wisely directs? If our intangible assets are actually worth $2,000,000, for instance, measured by rules of evidence laid down by the Supreme Court of the United States, and we pay, in fact, taxes upon a valuation of them three or four hundred per cent greater than that, why should they not be inventoried and scheduled in a capitalization scheme intended to truly represent and reflect the full and just sum of all the values used in the conduct of the company's business, which the law says should and must be taken into the account?

Our right to the full use and enjoyment of our property of this kind is as sacred to us and as fully assured to us, under repeated decisions of the Supreme Court, by the Constitution of the United States, as is the use and enjoyment of any property of any kind that we possess. Why, then, I repeat, should it not be capitalized, in the language of the Supreme Court, dollar for dollar, to the end that our

nominal capital and our actual capital should be equalized? In this connection the opinion of Judge Ruger, relied upon by the Supreme Court in the latest decision, is significant, wherein he says a contrary doctrine in regard to the sanctity of franchise is repugnant to justice and reason.

This brings me to the vital question which is before the committee, raised by this proposed bill, and that is what is capitalization—what is or should be its true financial function—and what is its legal or equitable relation to rates?

Stock capitalization is of two kinds, real and nominal—real when it represents property of equal actual value and nominal when the actual value is greater or less than par. The face value of it, therefore, has no legal relation to rates, the actual and not the nominal value being the measure of reasonableness in every case.

Gentlemen of the committee, it is hardly too much to say that there is apparently as much confusion in the public mind in regard to the capitalization of public utilities as there is about the nebular hypothesis. Even among men of affairs, among the well informed of all classes, there seems to be an ineradicable impression that a share of stock is not merely a certificate of part ownership in property, but that it is in itself property, and the holder of it is entitled to reasonable returns not only upon the actual value it actually represents—its proportionate part of the whole property—but upon the nominal dollar marks printed on its face, and that therefore it is against public policy in any particular case to increase that purely nominal value. To present my case properly I am compelled to demonstrate to you what the lawyers of the committee and probably all of you already fully understand, the utter falsity of this hoary-headed hallucination, the absolute fatuity of this ghost that will not down.

It is not twenty years since the law of the land upon this subject was formulated by the Supreme Court in language as clear as sunlight, and yet there is probably not more than one public man in a hundred who fully realizes that stock capitalization has absolutely no legal relation whatever to rates. That no matter when nor by whom the capital stock of a public-service corporation may have been authorized; no matter how its issue may have been safeguarded; no matter what may have been the terms and conditions of its subscription; no matter to what uses the proceeds may have been or may hereafter be applied, no share of it ever was or ever will be underwritten by Congress or by operation of law as to reasonable returns or as to any other kind of returns upon the nominal value stamped on its face. There is an apparent exception to this rule, but it is an exception which proves the truth of it. It is, in the case of an ideally perfect capitalization, such as is contemplated by this very act, where stock represents at par the precise value of the property used by the company in the conduct of its business—in such a case a guarantee may be read between the lines of the certificate, that so long as it truly represents the value of the property upon which it is predicated the holder of it is entitled to reasonable returns upon that representation. Which is equivalent, of course, to saying that when the face value and the actual value exactly coincide, each is the measure of the other and the capitalization is ideal in every particular and from every point of view.

So, in general, it may be said that the face value of a share of stock has the same relation to its actual value as the consideration named in a deed for an undivided interest has to the real value of the property conveyed in it. Each instrument carries a certain percentage of the whole thing—be that much or little—irrespective of the nominal consideration, and that is all there is to it.

Therefore, unless it is ideally capitalized it is wholly immaterial from a legal point of view whether a public utility is formally capitalized or not.

Hence it follows that the amount of stock (face value) issued in any given case can shed no light upon the question of the reasonableness of any particular rate, apart from the fact that the market value of its securities as a whole tends to prove the cash value as a whole of the property of the company issuing them, as appraised by the public. This, broadly stated, is the rule laid down in Smyth *v.* Ames, to which I have already referred, the leading case upon the subject, by the Supreme Court of the United States. Let us look at it a moment.

> The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. (Smyth *v.* Ames, 169 U. S., 446.)

Again, in the same case (547), the court says:

> What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.

And yet again:

> We hold that the basis of all calculations as to the reasonableness of rates, under legislative sanction, must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case.

Finally, even the market value of a company's securities, although it represents the appraisement of the public and as such is entitled to great weight, is not conclusive of actual value. Mr. Justice Harlan, in his exhaustive opinion in the great case I have just cited, covers this point as follows:

> If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by stocks, bonds, and obligations is not alone to be considered when determining the rates that may be reasonably charged.

What else is to be considered? Everything that constitutes real capitalization, as contradistinguished from nominal or fictitious capitalization; everything, tangible and intangible, which the company uses in its business and upon which it has a legal right to realize profits. If the word "plant" does not comprehend all this, the Supreme Court will so say, and that will foreclose further controversy. If, on the contrary, it construes the word to include every element of

value, it will simply reaffirm the great underlying principles of the law laid down in the leading cases, that—

> Undercapitalization is as fictitious as overcapitalization, and is as obnoxious to sound public policy; neither of them has any relation to rates, but the one in effect overburdens the public with taxation by making it carry an additional burden to its own fair share, and the other overburdens the public indirectly by imposing upon it inefficient and inadequate services. Both of them dull the edge of husbandry and tend to destroy that spirit of thrift and enterprise which it is the policy of the law to promote.

In other words, true value is the only true measure of true capitalization, and true capitalization is the consummation to be desired from every economic point of view, public and private. True capitalization can only exist when there is a true correspondence, dollar for dollar, between the real value of the property capitalized and the face value of the securities representing it.

Perhaps it will not be out of place for me to say—if the committee pleases—before leaving this branch of the case, that I can readily understand why corporate interest should oppose this proposition. In a sense it makes the corporation its own assessor and that carries with it this deadly dilemma: If you overvalue your property for rates you overassess it for taxes; and, conversely, if you underassess it for taxes you undervalue it for fair and reasonable returns. That this may not always be a pleasant alternative from a corporation standpoint is as plain to me as the proverbial nose on your face, but I can not comprehend, I confess it, why the representatives of the people should not rejoice in a statute that insures the ideal capitalization of public service corporations by making inflations economically as well as legally impossible.

Franchises are an integral and indestructible (without just compensation) part of the company's property, must be valued in all cases where its principal or product is directly or indirectly sought to be appropriated and are, therefore, like profits permanently invested in plants, capitalized by operation of law, whether or not as a matter of fact securities have been issued against them.

Returning now to the act of 1896: If the decision of the Supreme Court of the United States in Smyth *v.* Ames and its subsequent reaffirmations in a long line of unanimous decisions, if I say, that decision goes with the committee, there does not seem to be a legal peg left for the repealers here to stand on. If franchises are an integral part of the company's property and must be valued in all cases where the property of the company is directly or indirectly sought to be appropriated for the public use, why then it follows as the night to day, that by operation of law franchises are capitalized as we have already seen that betterments are, whether or not stock certificates are issued to represent them. That proposition is as plain and indisputable as the multiplication table, unless, indeed, it be in the power of Congress to reverse the decision in that great case, and in its almost innumerable successors.

In the case of the Monongahela Navigation Co. *v.* United States (148 U. S., p. 312) (in which an act of Congress forbade the valuation of a franchise), Mr. Justice Brewer, speaking for a unanimous court, said (p. 328):

> We are not, therefore, concluded by the declaration in the act that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property.

How shall just compensation for this lock and dam be determined? What does the full equivalent therefore demand? The value of property, generally speaking, is determined by its productiveness—the profits which its use brings to the owner. Various elements enter into this matter of value. Among them we may notice these: Natural richness of the soil, as between two neighboring tracts—one may be fertile, the other barren—the one so situated as to be susceptible of easy use, the other requiring much labor and large expense to make its fertility available. Neighborhood to the centers of business and population largely affects values. For that property which is near the center of a large city may command high rent, while property of the same character, remote therefrom, is wanted by but few, and commands but a small rental. Demand for the use is another factor. The commerce on the Monongahela River, as appears from the testimony offered, is great; the demand for the use of this lock and dam constant. A precisely similar property, in a stream where commerce is light, would naturally be of less value, for the demand for the use would be less. The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earnings to its owner.

So, before this property can be taken away from its owners, the whole value must be paid; and that value depends largely upon the productiveness of the property, the franchise to take tolls.

When by the taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely of the value of the tangible property itself, but also of that of the franchise of which he is deprived.

Equally conclusive is People *v.* O'Brien (111 N. Y., 1):

When we consider the generality with which investments have been made in securities based on corporate franchises throughout the country, the numerous laws adopted in the several States providing for their security and enjoyment, and the extent of litigation conducted in the various courts, state and federal, in which they have been upheld and enforced, there is no question but that, in the view of legislatures, courts, and the public at large, certain corporate franchises have been uniformly regarded as indestructible by legislative authority, and as constituting property in the highest sense of the term.

In the case of City of Detroit *v.* Detroit, etc., Plankroad Co. (43 Mich., 140), the question at issue was as to whether or not a toll-gate franchise to the Plankroad Company was a part of the property of the company, and as to whether or not it could be taken away without just compensation. Judge Cooley, delivering the opinion of the court, said:

It can not be necessary at this day to enter upon a discussion in denial of the right of the Government to take from either individuals or corporations any property which they may rightfully have acquired. In the most arbitrary times, such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta, and in this country always. It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary avocations of life, by gift, or descent, or by making a profitable use of a franchise granted by the state; it is enough that it has become private property, and it is thus protected by the "law of the land."

But why multiply authorities?

If then our intangible assets, considering the essential essence of the thing and not its technical form, are legally capitalized by the spirit of the law, why, I again ask, should they not be formally capitalized by the legislative letter of the law? And if franchises are property, and by operation of law are in effect capitalized, it will hardly be seriously contended—I say this with all respect for the learned corporation counsel—that the capitalization of tangible assets like betterments is against public policy, no matter how the money that was put into those betterments was realized. But lest some of you should not follow me in this analysis, I will endeavor to put contention to sleep by again citing a point-blank authority which not only fully covers that proposition but also the point that has been so often raised in regard to the wrong and injury to be appre-

hended from a stock dividend, on account of the acquisition by innocent stockholders of vested interests therein and otherwise. Fortunately for us, both of these contentions were involved in a stock dividend case that went up to the Supreme Court from this very District, and involving a stock dividend of $1,000,000 declared by this very company over thirty years ago, predicated upon betterments derived from profits which brother Thomas would have you believe were the fruits of excessive rates.

Stock dividends not reprehensible as being either against the public or private interests.

The court say (Gibbons *v.* Mahon, 136 U. S.):

(P. 563) The admitted facts present the following state of things: The accumulated earnings of the company were kept undivided, and actually added to the capital of the corporation, by investing them from time to time in its permanent works and plant, until the value of the works and plant amounted to a million dollars; no owner of particular shares, or of any interest therein, had the right to compel the company to divide or apportion those earnings; and while they remained so undivided and invested, the capital stock of the company was increased to the same amount by the act of Congress of May 24, 1866, etc.

This is as frank and clear in statement as it is sound in common sense. No note of disapproval of the policy that is so hotly challenged here. The facts cover the case here at issue, as to betterments, like a blanket. It is so plain that it is almost a reflection upon your intelligence to argue it. Now what is the judgment of the court in the premises. Listen:

A stock dividend really takes nothing from the property of the corporation and adds nothing to the interests of the shareholders. Its property is not diminished and their interests are not increased. After such a dividend, as before, the corporation has the title in all the corporate property; the aggregate interests therein of all the shareholders are represented by the whole number of shares and the proportional interest of each shareholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of the new ones.

Again:

Whether the gains and profits of a corporation should be so invested and apportioned as to increase the value of each share of stock, for the benefit of all persons interested in it, either for a term of life or for years, or by way of remainder in fee; or should be distributed and paid out as income, to the tenant for life or for years, excluding the remainder-man from any participation therein, is a question to be determined by the action of the corporation itself, at such times and in such manner as the fair and honest administration of its whole property and business may require or permit, and by a rule applicable to all holders of like shares of its stock, etc.

Now, can human language speak more plainly than that? Does it not foreclose my brother Thomas's contention that the capitalization of betterments is reprehensible and ought to be branded as against public policy, and that stock dividends are equally obnoxious thereto and contrary to the equities of the people?

In this decision the Supreme Court followed the leading case of Williams *v.* Western Union Telegraph Company (93 N. Y., 162), which has been since repeatedly sanctioned everywhere and never questioned anywhere.

In this case the court by a unanimous decision says:

Indeed, so far as the solvency and responsibility of a corporation is concerned, they are increased by a stock dividend where it has a surplus of property to correspond to

the amount of shares issued. In such case the surplus property is secured and impounded for the benefit of the creditors of the corporation and for the public, so that thereafter it can never be legally divided, withdrawn, or dissipated in any way.

So long as every dollar of stock issued by a corporation is represented by a dollar of property, no harm can result to individuals or the public from distributing the stock to the stockholders.

In considering this point, that is to say, the legal and practical effect of a stock dividend, the committee must bear in mind what the rights of the company are which it is proposed under and by virtue of this act to capitalize. The company must have a surplus, or there is nothing to divide. Clearly it is within the rights of the company to divide that surplus among its stockholders. Unquestionably it is in the power of the corporation under the law as laid down in the cases I have just cited and in innumerable other cases to divide and distribute its surplus, if it has any, among its stockholders in the way that was approved by the Supreme Court in Gibbons *v.* Mahon, unless the act of 1896, which is here impeached as against public policy, restrains the company from mortgaging its property under any other than the safeguards thrown around the public interests by the terms of that statute.

It must be apparent to any reflecting mind capable of looking into things, as well as at them, that between stock dividends, cash dividends, and bond dividends stock dividends are infinitely preferable from a public point of view. Not only for the reason assigned in Williams *v.* Western Union, which is unimpeachable, but for the further and far more important reason that whereas stock or share capitalization carries with it no vested rights against the public as to rates, bond capitalization does in this, that the very moment you reduce rates to a lower point than will permit of earnings sufficient to satisfy the fixed charges of the company the bondholder may lawfully do what the stockholder under no circumstances can do—demand his pound of flesh. His rights are vested and he may take them into a court of equity, upon the company's default, and have the face value of his obligation paid over to him in cash or his mortgage foreclosed. It goes without saying that that results in a public as well as a private calamity. As between the corporation and the public, excepting creditors only, the dollar mark upon the certificate means nothing. You may increase it, decrease it, or strike it out altogether; the stockholder's rights remain the same, the public equities remain the same, each resting upon the rock of the value of that which the company employs in the conduct of its business. But the dollar mark upon the company's bonds carries with it, when the mortgage is recorded, notice to all whom it may concern that it is an absolute, fixed, and unalterable liability as against the world.

Gentlemen of the committee, is it necessary for me to consume any more of your valuable time in more or less academic discussion about a problem which has been unmistakably solved; which fairly shines with the light shed upon it by the illustrious men who have illuminated all parts of the subject in the opinions of the Supreme Court of the United States, opinions which will distinguish that great bench as long as the true principles of public policy are respected among men?

Are you going to strike down this act, which is founded upon not only adjudicated cases, but upon economic principles which can not be undermined without the most overwhelming destruction of prop-

erty since the flood, because of doubts raised by distinctions without a difference, of fallacies founded on fads?

Do you think that you ought to be driven under whip and spur to get a move on you for fear the Supreme Court of the United States will not hold the scales of justice fairly between this corporation and the people in construing this law, or any other law? The corporation counsel admits he is gravely disturbed about that; are you?

Every one of these questions was answered practically by the positive admission here of the corporation counsel, who is a good lawyer, and whose ingenuity in making an effort to save the legal face of his clients has challenged the admiration of the entire bar. Let us see. When asked by Mr. Taylor (see p. 31 of his statement) whether in the New York case they took into consideration the physical properties—and the franchises—Mr. Thomas, without hesitation, replied: "Undoubtedly. And they do that in every case." To Mr. Taylor's further inquiry: Again said Mr. Taylor, "If we were to go to the question as to how cheap gas could be made here we would be compelled to take into consideration the property of the company, the plant and the franchise."

Mr. Thomas replied: "You would. Of course, the only element in it is that you can repeal the franchise, but you could not take away their property, and you could not take away the value of their property if you do that." Meaning, of course, that you could not take away the franchise without paying for it what it is actually worth.

Mr. Chairman and gentlemen of the committee, the desire of my clients is to have, as soon as may be, all of their property of every kind which they use in the conduct of their business fairly and honestly and conservatively valued. They believe that it is to their interest and to the interest of this community that that should be done at the earliest possible day. They believe that when that valuation is properly made the committee will know, the commissioners will know, the community will know, and they will know just what it is they have a right to reasonable returns upon.

Consumers are interested in something greater than slight gains from the reductions in rates, which are nothing compared with the ruin which ensues from denying to private property its just reward, thus unsettling values and destroying confidence.

Before concluding, I wish particularly to direct your attention to the very able opinion of Mr. Justice Moody, speaking for a unanimous court in the Knoxville water case, delivered during the October term of last year:

The courts, in clear cases, ought not to hesitate to arrest the operation of a confiscatory law, but they ought to refrain from interfering in cases of any other kind. Regulation of public service corporations which perform their duties under conditions of necessary monopoly will occur with greater and greater frequency as time goes on. It is a delicate and dangerous function, and ought to be exercised with a keen sense of justice on the part of the regulating body, met by a frank disclosure on the part of the company to be regulated. The courts ought not to bear the whole burden of saving property from confiscation, though they will not be found wanting where the proof is clear. The legislatures and subordinate bodies to whom the legislatiye power has been delegated ought to do their part. Our social system rests largely upon the sanctity of private property, and that State or community which seeks to invade it will soon discover the error in the disaster which follows. The slight gain to the consumer which he would obtain from a reduction in the rates charged by public service corporations is

as nothing compared with his share in the ruin which would be brought about by denying to private property its just reward, thus unsettling values and destroying confidence. On the other hand, the companies to be regulated will find it to their lasting interest to furnish freely the information upon which a just regulation can be based.

It is unnecessary and perhaps would be out of place for me to add a word to this magnificently reasoned out admonition to the legislative mind and to all whom it may concern.

And it is submitted that inasmuch as it is established by an unbroken line of Supreme Court decisions that capitalization can not under any circumstances enlarge the rights of the company nor diminish the equity of the public as to rates, the act of 1896 is in line with the best modern thought on the subject, and furnishes an effectual method of ascertaining true values for rating purposes, for taxation purposes, for capitalization purposes, and for the purpose of safeguarding the public from the real evils of false capitalization, inefficient management, and imperfect service.

APPENDIX.

[Documents asked for by the committee.]

OPINION IN PEOPLE *v.* O'BRIEN, 111 N. Y., 1.

The opinion in this case, which was decided in the year 1888 by the court of appeals of New York, was unanimous. The judges who decided it, the learned counsel who appeared in it (among them were the late James C. Carter and Mr. Root, the present Secretary of State), and the importance of the subject-matter have made the case a leading one. For this reason we quote from it at length. The opinion was delivered by Chief Justice Ruger. Beginning at page 35 of the report the court say:

A review of the judgment brings up for consideration propositions very grave in character, not only on account of the extent of the private interests affected, but because their determination will affect great public questions arising out of the limitations imposed by the Constitution upon the legislative power over the property of corporations lawfully acquired. The statutes upon which the action is predicated confessedly assume the right and power of the legislature to wrest from the company its franchises, to transfer them to other persons, and bestow their value upon the donees of the State. The statutes contemplate the absolute destruction of the property of the corporation, and the loss of its value to the creditors who have made loans in good faith upon the security of such property, and this action is avowedly prosecuted to accomplish the purposes of the legislation. It is, therefore, urgently contended by the attorney-general that none of the franchises of the corporation survived its dissolution, and that the mortgages previously given thereon, as well as all contracts made with connecting street railroads for the mutual use of their respective roads, fell with the repeal and could not be enforced.

If it could be supposed for a moment that this claim was reasonably supported by authority, or maintainable in logic or reason, it would give grave cause for alarm to all holders of corporate securities.

The contention that securities representing a large part of the world's wealth are beyond the reach of the protection which the Constitution gives to property, and are subject to the arbitrary will of sucessive legislatures, to sanction or destroy at their pleasure or discretion, is a proposition so repugnant to reason and justice, as well as the traditions of the Anglo-Saxon race in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary, and we desire in unqualified terms to express our disapprobation of such a doctrine. Whatever might have been the intention of the legislature, or even of the framers of the Constitution, in respect to the effect of the power of repeal, reserved in acts of incorporation, upon the property rights of a corporation, such power must still be exercised in subjection to the provisions of the Federal Constitution.

Considering the power which the State has to terminate the life of corporations organized under its laws, and the authority which its attorney-general has by suit to forfeit its fanchises for misuse or abuse, and to regulate and restrain corporations in the exercise of their corporate powers, there is little danger to be apprehended in the future from the overgrowth of power, or the monopolistic tendencies of such organizations; but whatever that danger may be, it is trivial in comparison with the widespread loss and destruction which would follow a judicial determination that the property invested in corporate securities was beyond the pale of the protection afforded by the fundamental law.

It is not, perhaps, strange, in the great variety of cases bearing upon the subject and the manifold aspects in which questions relating to corporate rights and property have been presented to the courts, that dicta, couched in general language, may be found giving color to the plaintiff's claim, but we think that there are no reported cases in which the judgment of the court has ever taken the franchises or property of a corporation from its stockholders and creditors, through the exercise of the reserved

power of amendment and repeal, or transferred it to other persons or corporations without provisions made for compensation.

Among other claims made by the State, it is contended that the stated term of one thousand years prescribed in its charter for the duration of the company constitutes a limitation upon the estate granted, and that, therefore, the corporation took a qualified estate only in its franchises, and that the rights reserved by the Revised Statutes (laws of 1884 and 1850), and the Constitution, to alter, amend, and repeal the charters or laws under which corporations might be organized, also constituted a limitation upon the estate granted, and that the exercise of the right of appeal by the State accomplished the destruction of the corporation and the annihilation of all franchises acquired under its charter.

It will be convenient, in the first instance, to consider the nature of the right acquired by the corporation under the grant of the common council, with respect to its terms or duration. This is to be determined by a consideration of the language of the grant and the extent of the interest which the grantor has authority to convey. We think this question has been decided by cases in this court, which are binding upon us as authority in favor of the perpetuity of such estates. That a corporation, although created for a limited period, may acquire title in fee to lands or property necessary for its use was decided in Nicoll *v.* New York and Erie Railroad Company (12 N. Y., 121), where it was held that a railroad corporation, although created for a limited period only, might acquire such title, and that where no limitation or restriction upon the right conveyed was contained in the grant, the grantee took all of the estate possessed by the grantor.

The title to streets in New York is vested in the city in trust for the people of the State, but under the Constitution and statutes it had authority to convey such title as was necessary for the purpose to corporations desiring to acquire the same for use as a street railroad. The city had authority to limit the estate granted either as to the extent of its use or the time of its enjoyment, and also had power to grant an interest in its streets for a public use in perpetuity, which should be irrevocable. (Yates *v.* Van De Bogert, 56 N. Y., 526; In re Cable Co., supra.)

Grants similar in all material respects to the one in question have heretofore been before the courts of this State for construction, and it has been quite uniformly held that they vest the grantee with an interest in the street in perpetuity, for the purposes of a street railroad. (People *v.* Sturtevant, 9 N. Y., 263; Davis *v.* Mayor, etc., 14 id., 506; Milhau *v.* Sharp, 27 id., 611; Mayor, etc., *v.* Second Ave. R. R. Co., 32 id., 261; Sixth Ave. R. R. Co. *v.* Kerr, 72 id., 330.)

Other cases are also reported in the books, but it is deemed unnecessary to accumulate authorities on this point.

In Milhau *v.* Sharp, Judge Selden said, with reference to a grant from the common council of New York, in no material respect differing from this: "It amounted to an immediate grant of an interest, and, it would seem, of a freehold in the soil of the street, to the defendants. The rails, when laid, would become a part of the real estate, and the exclusive right to maintain them perpetually is vested in the defendants, their successors and assigns. I say perpetually because there is no limitation in point of time to the continuance of the franchise, and no direct power is reserved to the corporation to terminate it. * * * The title to the rails when permanently attached to the land, and such right in the land as may be requisite for their perpetual maintenance, are, therefore, granted to the defendants by the resolution."

Judge Comstock, in Davis *v.* Mayor, etc., said: "As the consideration for constructing the road the ordinance clearly contemplates that it is to become the private property of the associates. They alone will be entitled to place their cars upon it, and within a maximum limit they can charge what they please for the carriage of passengers. These rights are in effect granted in perpetuity."

In the case of Mayor, etc., *v.* Second Avenue Railroad Company (32 N. Y., 272), it was said: "Assuming that the common council had power to make the grant, then its acceptance by Pearsall and his associates, signified by the execution of the agreement with the conditions annexed thereto, and the duties and obligations resulting therefrom, invested the latter with the right of property in the franchise which the common council could not take away or impair by any subsequent act of its own."

The resolution of the common council in this case expressly provided for traffic contracts by which the Broadway and Seventh Avenue Railroad Company should obtain a right to run cars over the tracks of the Broadway Surface Railroad, and no conditions upon the right granted to the Broadway Surface Railroad Company, in respect to the duration of such contract rights or otherwise, were imposed by the terms of the grant. It was clearly contemplated by its provisions that the rights granted should be exercised in perpetuity, if public convenience required it, by that corporation, or those who might lawfully succeed to its rights.

When we consider the mode required by the statutes and the Constitution to be pursued in disposing of this franchise, the inference as to its perpetuity seems to be irresistible, for it can not be supposed that either the legislature or the framers of the Constitution intended to offer for public sale property the title to which was defeasible at the option of the vendor, or that such property could be made the subject of successive sales to different vendees as often as popular caprice might require it to be done.

Neither can it be supposed that they contemplated the resumption of property, which they had expressly authorized their grantee to mortgage and otherwise dispose of, to the destruction of interests created therein by their consent.

We are, therefore, of the opinion that the Broadway Surface Railroad Company took an estate in perpetuity in Broadway through its grant from the city, under the authority of the constitution and the act of the legislature. It is also well settled by authority in this State that such a right constitutes property within the usual and common signification of that word (Sixth Ave. R. R. Co. *v.* Kerr, 72 N. Y., 330; People *v.* Sturtevant, 9 id., 263).

When we consider the generality with which investments have been made in securities based upon corporate franchises throughout the whole country, the numerous laws adopted in the several States providing for their security and enjoyment, and the extent of litigation conducted in the various courts, state and federal, in which they have been upheld and enforced, there is no question but that in the view of legislatures, courts, and the public at large, certain corporate franchises have been uniformly regarded as indestructible by legislative authority, and as constituting property in the highest sense of the term.

It is, however, earnestly contended for the State that such a franchise is a mere license or privilege enjoyable during the life of the grantee only, and revocable at the will of the State. We believe this proposition to be not only repugnant to justice and reason, but contrary to the uniform course of authority in this country. The laws of this State have made such interests taxable, inheritable, alienable, subject to levy and sale under execution, to condemnation under the exercise of the right of eminent domain, and invested them with the attributes of property generally.

We will refer to a few only of the statutes on this subject from which the implication arises not only that the State intended to invest these franchises with the character of property, but also to enable their mortgagees, purchasers, and assigns to enjoy their use under an indefeasible title. Thus railroad corporations have been authorized to contract with other corporations for a qualified transfer of such franchises for terms unlimited, except by the agreement of the parties (chap. 218, Laws of 1839; sec. 2, chap. 1843, Laws of 1872; sec. 15, chap. 252, Laws of 1884); to pledge them by way of mortgage as security for loans (sub. 10, sec. 28, Laws of 1850); to consolidate with other companies owning connecting and continuous lines of railroad, and continue the use of such franchises under the name of their successors (chap. 108, Laws of 1875; Shields *v.* Ohio, 95 U. S., 319). Mortgagees and others have been authorized to purchase such franchises upon mortgage sale and otherwise, and afforded the right to organize so as to enjoy their use thereafter (sec. 1, chap. 444, Laws of 1857; chaps. 469 and 710, Laws of 1873; chap. 113, Laws of 1800; chap. 430, Laws of 1874). Purchasers upon a mortgage or execution sale have been authorized to form associations for the purpose of continuing the operation of such railroad with all its powers, privileges, and franchises (sec. 1, chaps. 469 and 710, Laws of 1873; sec. 1, chap. 282, Laws of 1854). The sale of such franchises has been authorized by the municipality where located to parties proposing to build street railroads (constitutional amendment of 1875; sec. 7, chap. 252, Laws of 1884; chaps. 62 and 66, Laws of 1886). And by section 15 of the act under which this corporation was organized, such companies were expressly permitted to lease or transfer their rights and franchises to other street railroad corporations. Indeed, it is matter of public history that one-half of the railroads of the State are now operated by organizations other than those to whom the franchises were originally granted, notwithstanding their dissolution, through transfers effected by the foreclosure of mortgages and otherwise.

The statutes cited, as well as others not specially referred to, indicate the general policy of the State to render such interests independent of the life of the original corporation and transferable as property by means of judicial proceedings and otherwise, under certain restrictions not pertinent to our present purpose particularly to consider (People *v.* Brooklyn F. & C. I. R. R. Co., 89 N. Y., 84).

In Mayor, etc., *v.* Second Avenue Railroad Company (32 N. Y., 261), Judge Brown said: "The rights of municipal corporations to property in lands and its usual incidents, and to create ferries and railroad franchises, are quite distinct and separate from their duties as legislatures, having authority to pass ordinances for the control and gov-

ernment of persons and interests within the city limits. The latter are powers held in trust, as all legislative powers are, to be used and exercised for the benefit and welfare of the whole community while the former are property, in the ordinary sense, to be acquired and conveyed in the same manner as natural persons acquire and transfer property."

The same learned judge said in Brooklyn Central Railroad Company *v.* Brooklyn City Railroad Company (32 Barb., 364): "The grant to the city railroad company and its acceptance on the conditions annexed, with the duties and obligations and large expenditures resulting therefrom, would seem, therefore, upon the principles I have endeavored to state, to invest the company with the right of property in the franchise of which it can not be deprived without its consent or against its will."

It was held by this court in Langdon *v.* Mayor, etc. (93 N. Y., 129) that a grant from the city of land to be used as a wharf carried with it as a necessary incident and appurtenance a right of way for vessels over adjoining waters to the wharf, and that under such grants the property granted can only be resumed by the grantor when needed for public use by the exercise of the right of eminent domain.

The court also held in People *v.* Brooklyn, Flatbush and Coney Island Railroad Company (89 N. Y., 75) that upon a foreclosure of the property and franchises of a railroad corporation an individual could lawfully become their purchaser and could hold and transfer them to any corporation having or acquiring the right to exercise such franchises.

In Sixth Avenue Railroad Company *v.* Keer (72 N. Y., 330) it was held that the right of a street railroad company in the use of a street for the purpose of its business was a property right subject to condemnation for public use. As we have already seen, the cases of People *v.* Sturtevant, Mayor, etc., *v.* Sixth Avenue Railroad, Davis *v.* Mayor, etc., and Milhau *v.* Sharp, hereinbefore referred to, sustain the same views.

The case of N. O., S. F. and Lake R. R. Company *v.* Delamore (114 U. S., 501) is directly in point.

There the franchise, as here, was acquired by the corporation from the municipal authorities of a city under general laws authorizing the formation of street railroad corporations. It was held, "where there has been a judicial sale of railroad property under a mortgage, authorized by law, covering its franchises, it is now well settled that the franchises necessary to the use and enjoyment of the railroad pass to the purchaser. * * * It follows that if the franchises of a railroad corporation, essential to the use of its road, and other tangible property, can by law be mortgaged to secure its debts, the surrender of its property upon the bankruptcy of the company carries the franchises, and they may be sold and pass to the purchaser at the bankruptcy sale."

In Memphis and Louisville Railroad Company *v.* Railroad Commissioners (112 U. S., 609, 619) it was said: "The franchise of being a corporation need not be implied as necessary to secure to the mortgage bondholders or the purchasers at a foreclosure sale the substantial rights intended to be secured. They acquire the ownership of the railroad and the property incident to it and the franchise of maintaining and operating it as a road."

These rights of property having been acquired and created under the express sanction and authority of the State, it remains to inquire whether they were defeasible and subject to be taken away through the exercise of any power reserved by the State to alter, amend, and repeal laws or charters.

The reservations applying to this case are claimed to be as follows: First. Section 1, article 8, title "Corporations, how created" (Constitution of 1846), providing that "all general laws and special acts passed pursuant to this section may be altered from time to time or repealed." Second. Section 8, title 3, chapter 18, of the Revised Statutes (7th ed.), providing that "the charter of every corporation that shall be granted by the legislature shall be subject to alteration, suspension, and repeal in the discretion of the legislature." Third. Section 48, chapter 140, laws of 1850, providing that "the legislature may at any time annul or dissolve any incorporation formed under this act, but such dissolution shall not take away or impair any remedy given against any such corporations, its stockholders or officers, for any liability which shall have been previously incurred." And, fourth, chapter 282, laws of 1884, under which this corporation was organized, giving it all the powers and privileges granted, and subject to all of the liabilities imposed by chapter 140, laws of 1850, and the several acts amendatory thereof, and further providing that "the legislature may at any time alter, amend, or repeal this act." (Sec. 19.)

The constitution of 1846 for the first time introduced restrictions upon the power of legislatures to grant special charters, and required that provisions for corporations, save in exceptional cases, should thereafter be made by general laws. The obvious intent of the constitutional reservation was to remove any doubt as to the power of the

legislature to amend or repeal the laws, whether general or special, authorized by that instrument for the formation of corporations, and seemed to leave the provisions of the Revised Statutes in relation to reserved power over charters in full force and effect.

It will be observed that the constitution and the act of 1884 provide specially for the amendment and repeal of statutes alone, but the Revised Statutes and the act of 1850 are addressed specially to the subject of the annulment and repeal of charters created under such statutes.

It seems to us that these provisions relate to different subjects, viz, the repeal of laws and the annulment of charters formed under such laws, and that the power to do one does not naturally or properly include the power to do the other. (Albany Northern R. R. Co. *v.* Brownell, 24 N. Y., 345.)

Certainly the repeal of a law authorizing corporations would not destroy organizations formed under it, nor would the annulment of a charter affect the law under which it was created. Neither does it seem reasonable to suppose, while taking away the power of the legislature to create corporate bodies, the Constitution intended to confer power to destroy them, thus enabling them to accomplish indirectly that which they were precluded from doing directly. It must be assumed that the framers of the Constitution, as well as the legislature, used the language employed by them intelligently and according to its common and customary signification, and when they spoke of the annulment and repeal of the acts and laws alone, did not intend to embrace charters as well. These two subjects have frequently been the occasion of legislative action, and since the restrictions upon the powers of the legislature to grant special charters, there is no reason to suppose that they did not use the language employed in its literal sense, and especially so when both subjects were immediately within the contemplation of the lawmakers.

In considering this question, the provisions of the Revised Statutes may be laid out of view, for if they contain any broader power than the act of 1850 they must be deemed to have been repealed by the provisions of the latter act as inconsistent therewith. The reservations, therefore, which apply to this case are contained in the acts of 1850 and 1884, which constitute a part of the railroad charter.

These acts should be read and construed together, and, as thus considered, provide that the legislature may at any time alter, amend, and repeal these acts, and may also annul and dissolve charters formed thereunder, but such dissolution shall not take away or impair any remedy against such corporation, its officers and trustees, for any liability previously incurred. The contract proved between the corporation and the State was intended, in respect to a repeal of the charter, to survive the dissolution of the corporation and to determine the rights of parties interested in the property in the event of dissolution. By virtue of this contract the corporation secured rights subject to be taken away under certain restrictions, and protected itself from any consequences following a repeal of its charter except those expressly agreed upon.

But even if it be conceded that the constitutional provisions place the right to repeal charters, as well as laws, beyond the power of legislatures to waive or destroy, the question still remains as to the effect of such a repeal upon the franchises of the corporation; whether it contemplates anything more than the extinction of the corporate life, and consequent disability to continue business and exercise corporate functions after that time, or has a wider scope and effect.

It may be assumed in this discussion that the authority of the legislature to repeal a charter, if it has expressed its intention to reserve such power in its grant, constitutes a valid reservation. Parties to a contract may lawfully provide for its termination at the election of either party, and it may, therefore, be conceded that the State had authority to repeal this charter, provided no rights of property were thereby invaded or destroyed. In speaking of the franchises of a corporation we shall assume that none are assignable except by the special authority of the legislature. We must also be understood as referring only to such franchises as are usually authorized to be transferred by statute, viz, those requiring for their enjoyment the use of corporeal property, such as railroad, canal, telegraph, gas, water, bridge, and similar companies, and not to those which are in their nature purely incorporeal and inalienable, such as the right of corporate life, the exercise of banking, trading, and insurance powers, and similar privileges. The franchises last referred to being personal in character and dependent upon the continued existence of the donee for their lawful exercise, necessarily expire with the extinction of corporate life, unless special provision is otherwise made. (People *v.* B., F. and C. I. R. R. Co., 89 N. Y., 84: People *v.* Metz, 50 id., 61.)

In the former class it has been held that at common law real estate acquired for the use of a canal company could not be sold on execution against the corporation separate from its franchise, so as to destroy or impair the value of such franchise (Gue *v.* Tide Water Canal Co., 24 How. (U. S.), 257), and by parity of reasoning it must follow that the tracks of a railroad company, and the franchise of maintaining and

operating its road in a public street, are equally inseparable, in the absence of express legislative authority providing for their severance.

The statute of our State authorizing the sale of the franchise and property of a railroad company on execution seems to recognize the indissolubility of the connection between the corporeal property and its incorporeal right of enjoyment.

It is also to be observed that in none of the provisions for repeal in this State is there anything contained which purports to confer power to take away or destroy property or annul contracts, and the contention that the property of a dissolved corporation is forfeited rests wholly upon what is claimed to be the necessary consequence of the extinction of corporate life. We do not think the dissolution of a corporation works any such effect. It would not naturally seem to have any other operation upon its contracts or property rights than the death of a natural person upon his. (Mumma *v.* Potomac Co., 8 Pet., 281, 285.)

The power to repeal the charter of a corporation can not upon any legal principle include the power to repeal what is in its nature irrepealable, or to undo what has been lawfully done under power lawfully conferred. (Butler *v.* Palmer, 1 Hill, 335.)

The authorities seem to be uniform to the effect that a reservation of the right to repeal enables a legislature to effect a destruction of the corporate life and disable it from continuing its corporate business (People ex rel. Kimball *v.* B. and A. R. R. Co., 70 N. Y., 569; Philips *v.* Wickham, 1 Paige, 590), and a reservation of the right to alter and amend confers power to pass all needful laws for the regulation and control of the domestic affairs of a corporation, freed from the restrictions imposed by the Federal Constitution upon legislation impairing the obligation of contracts. (Munn *v.* Illinois, 94 U. S., 113, 123.)

We think no well-considered case has gone further than this, while in many cases such power has been expressly held to be limited to the effect stated. In the language of Chief Justice Marshall in Fletcher *v.* Peck (6 Cranch., 87, 135): "If an act be done under a law, a succeeding legislature can not undo it. The past can not be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estates, and if those estates may be seized by the sovereign authority, still that they originally vested is a fact and can not cease to be a fact. When, then, a law is in the nature of a contract, when absolute rights have vested under that contract, a repeal of the law can not divest those rights."

It would seem to be quite obvious that a power existing in the legislature by virtue of a reservation only could not be made the foundation of an authority to do that which is expressly inhibited by the Constitution or afford the basis of a claim to increase jurisdiction over the lives, liberty, or property of citizens beyond the scope of express constitutional power.

Since the decision of the celebrated Trustees Dartmouth College *v.* Woodward (4 Wheat., 518) the doctrine that a grant of corporate powers by the sovereign to an association of individuals for public use constitutes a contract within the meaning of the Federal Constitution, prohibiting state legislatures from passing laws impairing its obligations, has, although sometimes criticised, been uniformly acquiesced in by the courts of the several States as the law of the land, and may be regarded as too firmly established to admit of question or dispute. (People *v.* Sturtevant, supra; Milhau *v.* Sharp, supra; Brooklyn Cent. R. R. Co. *v.* Brooklyn City R. R. Co., supra.) The intimation by Judge Story in that case that the rule might be otherwise if the legislature should reserve the power of amending or repealing it, led to the adoption by the legislatures of the various States of the practice of incorporating such reservations in acts of incorporation. Whatever may be the effect of such reservations, it is immaterial whether they are embraced in the act of incorporation or in general statutes or provisions of the Constitution. In either case they operate upon the contract according to the language of the reservation. (Morawetz on Corp., 464.) It is manifest, therefore, that in the absence of such reserved power, legislatures have no authority to violate, destroy, or impair chartered rights and privileges or power over corporations, except such as they possess by virtue of their legislative authority over persons and property generally. It is obvious that this reserved power does not in any sense constitute a condition of the grant, and can not have effect as such, but is simply a power to put an end to the contract, with such effect upon the rights of the parties thereto as the law ascribes to it. (Sinking Fund Cases, 99 U. S., 700, 748; Tomlinson *v.* Jessup, 15 Wall., 454, 457.)

In speaking of the exercise of this power by Congress in the Sinking Fund cases, Chief Justice Waite says: "Congress not only retains but has given special notice of its intention to retain full and complete power to make such alterations and amendments of the charter as come within the just scope of the legislative power. That this power has a limit no one can doubt. All agree that it can not be used to take away property already acquired under the operation of the charter, or to deprive the corpo-

ration of the fruits actually reduced to possession of contracts lawfully made. * * * Whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs, it retained the power to establish by amendment. In doing so it can not undo what has already been done, and it can not unmake contracts that have already been made, but it may provide for what shall be done in the future and may direct what preparation shall be made for the due performance of contracts already entered into. It might originally have prohibited the borrowing of money on mortgage, or it might have said that no bonded debt should be created without ample provision by sinking fund to meet it at maturity. Not having done so at first, it can not now by direct legislation vacate mortgages already made under the powers originally granted nor release debts already contracted."

The judges dissenting in that case contended that the reserved power could not be construed as authorizing the alteration, violation, or nullification of any of the material provisions of the grant, but should be held to mean simply a reservation of the power to legislate, freed from the restriction imposed by the constitutional provisions against legislation impairing the obligations of contracts. Mr. Justice Bradley said: "The reserved power in question is simply that of legislation—to alter, amend, or repeal a charter. This is very different from the power to violate or to alter the terms of a contract at will. A reservation of power to violate a contract, or alter it, or impair its obligation, would be repugnant to the contract itself, and void. A proviso repugnant to the granting part of a deed or to the enacting part of a statute is void. Interpreted as a reservation of the right to legislate, the reserved power is sustainable on sound principles; but interpreted as the reservation of the right to violate an executed contract it is not sustainable."

This dissent proceeded upon the ground that the acts of Congress under consideration changed some of the essential features of the contract, and were therefore void, as being obnoxious to the provisions of the Constitution for the protection of life, liberty, and property. The majority of the court held, however, that such acts were simply an exercise of the power of Congress to regulate the internal administration of the affairs of a corporation, which to a certain extent it was unanimously agreed that it possessed. There was no dispute or disagreement as to the correctness of the rule stated, that the power of amendment and repeal was a restricted power, limited by the provisions of the Constitution. An interpretation conferring the power of violating a contract at will upon one of its parties, under a clause authorizing its amendment or repeal, would seem to be inconsistent with any reasonable notion of the nature of such an instrument, and beyond the power of parties lawfully to create.

If it is possible to conceive the idea of a repealable grant, certainly such a grant, accompanied with power to convey or pledge the interest granted, must, on the execution of the power, necessarily preclude a resumption by the grantor of the subject of the grant, or any right of property acquired under it. An express reservation by the legislature of power to take away or destroy property lawfully acquired or created would necessarily violate the fundamental law, and it is equally clear that any legislation which authorizes such a result to be accomplished indirectly, would be equally ineffectual and void.

In People *v.* National Trust Company (82 N. Y., 287) the question was raised that a dissolved corporation was discharged from the obligation to pay rent accruing upon a lease subsequent to its dissolution. Judge Rapallo said: "This claim is not founded upon the allegation of any payment, release, or surrender, or anything affecting the merits of the claim, but upon the sole ground that by the dissolution of the corporation the lease was terminated and the covenant to pay the rent ceased to be obligatory. We do not regard the dissolution as having any such effect. Under the statutes of this State, on the dissolution of a corporation, its assets become a trust fund for the payment of its debts, and these include debts to mature as well as accrued indebtedness, and all engagements entered into by the corporation which have not been fully satisfied or canceled."

In Commonwealth *v.* Essex Company (13 Gray, 239) Justice Shaw said: "When, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted." (Albany R. R. Co. *v.* Brownell, 24 N. Y., 345.)

The case of City of Detroit *v.* Detroit and F. Plankroad Company (43 Mich., 140) is not only in point, but entitled to high consideration on account of the distinction as a constitutional lawyer of the learned judge who wrote the opinion of the court. The question was whether the legislature had power to compel the defendant to remove its tollgates from within the city limits after they had been lawfully placed there under the provisions of its charter. Judge Cooley says: "It can not be necessary at

this day to enter upon a discussion in denial of the right of the Government to take from either individuals or corporations any property which they may rightfully have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta, and in this country always. It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary avocations of life, by gift, or descent, or by making a profitable use of a franchise granted by the State, it is enough that it has become private property, and it is thus protected by the 'law of the land.'"

Further authorities upon this same point are the following:

West River Bridge Co. *v.* Dix, 6 How., 507.
Monongahela Nav. Co. *v.* United States, 148 U. S., 312.
Long Island Water Supply Co. *v.* Brooklyn, 166 U. S., 685; affirming 143 N. Y., 596.
People ex rel. Woodhaven Gas Co. *v.* Deehan, 153 N. Y., 528, 532.
Parker *v.* Elmira, etc., R. Co., 165 N. Y., 274.
People ex rel. Met. Street R. Co. *v.* Tax Com., 174 N. Y., 417; affirmed 199 U. S., 1.
Matter of White Plains Comm., 176 N. Y., 239.

OPINION IN THE MONONGAHELA NAVIGATION CASE.

In the case of Monongahela Company *v.* United States, 148 U. S., p. 312 (in which an act of Congress forbade the valuation of a franchise), Mr. Justice Brewer, speaking for a unanimous court, said (p. 328):

We are not, therefore, concluded by the declaration in the act that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property.

How shall just compensation for this lock and dam be determined? What does the full equivalent therefor demand? The value of property, generally speaking, is determined by its productiveness—the profits which its use brings to the owner. Various elements enter into this matter of value. Among them we may notice these: Natural richness of the soil, as between two neighboring tracts—one may be fertile, the other barren; the one so situated as to be susceptible of easy use, the other requiring much labor and large expense to make its fertility available. Neighborhood to the centers of business and population largely affects values. For that property which is near the center of a large city may command high rent, while property of the same character, remote therefrom, is wanted by but few, and commands but a small rental.

Demand for the use is another factor. The commerce on the Monongahela River, as appears from the testimony offered, is great; the demand for the use of this lock and dam constant. A precisely similar property, in a stream where commerce is light, would naturally be of less value, for the demand for the use would be less. The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earnings to its owner. For each separate use of one's property by others the owner is entitled to a reasonable compensation; and the number and amount of such uses determine the productiveness and the earnings of the property, and, therefore, largely its value. So that if this property, belonging to the Monongahela company, is rightfully where it is, the company may justly demand from everyone making use of it a compensation; and to take that property from it deprives it of the aggregate amount of such compensation which otherwise it would continue to receive. What amount of compensation for each separate use of any particular property may be charged is sometimes fixed by the statute which gives authority for the creation of the property; sometimes determined by what it is reasonably worth; and sometimes, if it is purely private property, devoted only to private uses, the matter rests arbitrarily with the will of the owner. In this case, it being properly devoted to a public use, the amount of compensation was subject to the determination of the State of Pennsylvania—the State which authorized the creation of the property. The prices which may be exacted under this legislative grant of authority are the tolls, and these tolls, in the nature of the case, must enter into and largely determine the matter of value.

In the case of Montgomery County *v.* Bridge Company (110 Penn. St., 54, 58), in which the condemnation of a bridge belonging to the bridge company was sought, the court said: "The bridge structure—the stone, iron, and wood—was but a portion of the property owned by the bridge company and taken by the county. There were the franchises of the company, including the right to take toll, and these were as effectually taken as was the bridge itself. Hence, to measure the damages by the mere cost of building the bridge would be to deprive the company of any compensation for the destruction of its franchises. The latter can no more be taken without compensation

than can its tangible corporeal property." Their value necessarily depends upon their productiveness. If they yield no money in return over expenditures, they would possess little, if any, present value. If, however, they yield a revenue over and above expenses, they possess a present value, the amount of which depends, in a measure, upon the excess of revenue. Hence, it is manifest that the income from the bridge was a necessary and proper subject of inquiry before the jury. * * *

So, before this property can be taken away from its owners, the whole value must be paid; and that value depends largely upon the productiveness of the property, the franchise to take tolls. That, in the absence of congressional action, the State of Pennsylvania had the power, either acting itself or through a corporation which it chartered, to improve the navigation of the river by means of locks and dams, and also to authorize the exaction of tolls for the use of such improvements, are matters upon which there can be no dispute, in view of the many decisions of this court. Those very closely in point are Willson *v.* Blackbird Creek Marsh Co. (2 Pet., 245); Pound *v.* Turck (95 U. S., 459); Huse *v.* Glover (119 U. S., 543); Sands *v.* Manistee River Improvement Co. (123 U. S., 288).

(P. 341:) The theory of the Government seems to be that the right of the Navigation Company to have its property in the river, and the franchises given by the State to take tolls for the use thereof, are conditional only, and that whenever the Government, in the exercise of its supreme power, assumes control of the river it destroys both the right of the company to have its property there and the franchise to take tolls. But this is a misconception. The franchise is a vested right. The State has power to grant it. It may retake it, as it may take other private property, for public uses, upon the payment of just compensation. A like, though a superior, power exists in the National Government. It may take it for public purposes, and take it even against the will of the State; but it can no more take the franchise which the State has given than it can any private property belonging to an individual. * * * (P. 343:) It is also suggested that the Government does not take this franchise; that it does not need any authority from the State for the exaction of tolls, if it desires to exact them; that it only appropriates the tangible property, and then either makes the use of it free to all, or exacts such tolls as it sees fit, or transfers the property to a new corporation of its own creation, with such a franchise to take tolls as it chooses to give. But this franchise goes with the property, and the Navigation Company, which owned it, is deprived of it. The Government takes it away from the company, whatever use it may make of it, and the question of just compensation is not determined by the value to the Government which takes but the value to the individual from whom the property is taken; and when by the taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely of the value of the tangible property itself, but also of that of the franchise of which he is deprived.

EXTRACT FROM OPINION OF JUSTICE PECKHAM, SPEAKING FOR A UNANIMOUS COURT, IN THE NEW YORK CONSOLIDATED GAS CASE.

It can not be disputed that franchises of this nature are property and can not be taken or used by others without compensation. (Monongahela Co. *v.* United States, 148 U. S., 312; People *v.* O'Brien, 111 N. Y., 1, and cases cited.) The important question is always one of value. Taking their value in this case as arrived at by agreement of their owners, at the time of the consolidation, that value has been increased by the finding of the court below to the sum of $12,000,000 at the time of the commencement of this suit. The trial court said: "If, however, complainant's franchises were worth $7,781,000 in 1884, and its tangible property at the same time was appraised (as appears in evidence) at $30,000,000 (in round figures), then since complainant's business (in sales volume) has in twenty-three years almost quadrupled, and its tangible assets grown to $47,000,000, it appears to me that a fair method of fixing value of the franchises in 1905 is to assume the same growth in value for the franchises as is demonstrated by the evidence in the case of tangible property. If, therefore, the franchise valuation of 1884 was proportioned to personalty and realty of $30,000,000, a franchise valuation proportioned to $47,000,000 in 1905 would be over $12,000,000. This, I think, a logical result from the assumption I am compelled to start with, i. e., that franchises have a separate and independent value. But there is, however, no method of valuing franchises except by a consideration of earnings; earnings must be proportioned to assets; and both kinds of assets, tangible and intangible, must stand upon the same plane of valuation; having, therefore, a measure of growth of tangible assets from 1884 to 1905, the franchise assets must be assumed to have grown in the same proportion. I find that the value of complainant's franchises at the date of inquiry was not less than $12,000,000, making a total valuation of

$59,000,000, upon which the probable return is $3,030,000, or very considerably less than 6 per cent." The judge stated his own views as opposed to including these franchises in the property upon the value of which a return is to be calculated in fixing the amount of rates, but held that he was bound by decided cases to hold against his personal views.

We are not prepared to hold with the court below as to the increased value which it attributes to the franchises. It is not only too much a matter of pure speculation, but we think it is also opposed to the principle upon which such valuation should be made. This corporation is one of that class which is subject to regulation by the legislature in the matter of rates, provided they are not made so low as to be confiscatory. The franchises granted the various companies and held by complainant consisted in the right to open the streets of the city and lay down mains and use them to supply gas, subject to the legislative right to so regulate the price for the gas as to permit not more than a fair return (regard being had to the risk of the business) upon the reasonable value of the property at the time it is being used for the public.

The evidence shows that from their creation down to the consolidation in 1884 these companies had been free from legislative regulation upon the amount of the rates to be charged for gas. They had been most prosperous and had divided very large earnings in the shape of dividends to their stockholders, dividends which are characterized by the Senate committee, appointed in 1885 to investigate the facts surrounding the consolidation, as enormous. The report of that committee shows that several of the companies had averaged, from their creation, dividends over 16 per cent, and the six companies in the year 1884 paid a dividend upon capital which had been increased by earnings, as in the case of the Manhattan and the New York, of 18 per cent, and, had it been upon the money actually paid in, it would have been nearly 25 per cent.

The committee also said in the same report that these "franchises were in force November 10, 1884, the time of the consolidation, and the money invested in them was earning the same enormous dividends. So far as the evidence shows, there was nothing in the condition of affairs on the 10th of November to indicate that these franchises would not be as valuable for the next twenty years as they had been in the past. There were gas companies enough in the city with a capacity capable of supplying the demands for the next twenty years. A law was on our statute books that virtually prohibited the laying of any more gas pipes in the streets. The gas companies had an agreement among themselves, fixing the price of gas at a figure that paid these dividends. The people were paying this price, as they had in the past, without objection or protest. This price may have been too high, and the dividends were excessive, but they were not illegal, and the valuation of the franchises computed upon these dividends, and that state of facts can not be called a violation of a law that expressly authorized it to be done, unless such valuation was too high."

The committee, upon these facts, were of opinion that the valuation of $7,781,000 for the franchises was not more than their fair aggregate value.

Assuming, as the committee did, that the company would be permitted to charge the same prices in the future which in the past had resulted in these "enormous" or "excessive" dividends, it need not be matter of surprise that a franchise by means of which such dividends had been possible was not regarded as overvalued at the sum stated in 1884.

We think that under the above facts the courts ought to accept the valuation of the franchises fixed and agreed upon under the act of 1884 as conclusive at that time. The valuation was provided for in the act, which was followed by the companies, and the agreement regarding it has been always recognized as valid, and the stock has been largely dealt in for more than twenty years past on the basis of the validity of the valuation and of the stock issued by the company.

But although the State ought, for these reasons, to be bound to recognize the value agreed upon in 1884 as part of the property upon which a reasonable return can be demanded, we do not think an increase in that valuation ought to be allowed upon the theory suggested by the court below. Because the amount of gas supplied has increased to the extent stated, and the other and tangible property of the corporations has increased so largely in value, is not, as it seems to us, any reason for attributing a like proportional increase in the value of the franchise. Real estate may have increased in value very largely, as also the personal property, without any necessary increase in the value of the franchise. Its past value was founded upon the opportunity of obtaining these enormous and excessive returns upon the property of the company, without legislative interference with the price for the supply of gas, but that immunity for the future was, of course, uncertain, and the moment it ceased and the legislature reduced the earnings to a reasonable sum the great value of the franchise would be at once and unfavorably affected, but how much so it is not possible for us now to see. The value would most certainly not increase. The question of the regu-

lation of rates did from time to time thereafter arise in the legislature, and finally culminated in these acts which were in existence when the court below found this increased value of the franchises. We can not, in any view of the case, concur in that finding.

This increase in value did, however, form part of the sum upon which the court below held the complainant was entitled to a return. That court found the value of the tangible assets actually employed at the time of the commencement of this suit in the business of supplying gas by the complainant to be $47,831,435, to which it added the $12,000,000 as the value of the franchises as found by it, making the total of $59,831,435, upon which it held that the company was entitled to a return of 6 per cent, being $3,589,886.10. It also found its total net income for the year 1905 amounted to $5,881,192.45, almost 10 per cent upon the sum above named. Altering the finding of the court so far only as to place the value of the franchises at the time agreed upon in 1884, $7,781,000, the total value upon that basis of the property employed by the company would be $55,612,435, upon which 6 per cent would be $3,336,746.10, while the sum estimated as the return on 80-cent gas would have been $3,024,592.14, which is nearly 5½ per cent on the above total of $55,612,435.

What has been said herein regarding the value of the franchises in this case has been necessarily founded upon its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. We simply accept the sum named as the value under the circumstances stated.

There is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments. One who invests his money in a business of a somewhat hazardous character is very properly held to have the right to a larger return without legislative interference than can be obtained from an investment in government bonds or other perfectly safe security. The man that invested in gas stock in 1823 had a right to look for and obtain, if possible, a much greater rate upon his investment than he who invested in such property in the city of New York years after the risk and danger involved had been almost entirely eliminated.

In an investment in a gas company, such as complainants, the risk is reduced almost to a minimum. It is a corporation, which in fact, as the court below remarks, monopolizes the gas service of the largest city in America, and is secure against competition under the circumstances in which it is placed, because it is a proposition almost unthinkable that the city of New York would, for purposes of making competition, permit the streets of the city to be again torn up in order to allow the mains of another company to be laid all through them to supply gas which the present company can adequately supply. And, so far as it is given us to look into the future, it seems as certain as anything of such a nature can be that the demand for gas will increase, and, at the reduced price, increase to a considerable extent. An interest in such a business is as near a safe and secure investment as can be imagined with regard to any private manufacturing business, although it is recognized at the same time that there is a possible element of risk, even in such a business. The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently subject to many of the vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of 6 per cent would be enough to avoid the charge of confiscation, and for the reason that a return of such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

ANNUAL STATEMENT OF BUSINESS AND LIST OF SHAREHOLDERS OF THE WASHINGTON GASLIGHT COMPANY.

OFFICE OF THE WASHINGTON GASLIGHT COMPANY,
Washington, D. C., February 1, 1909.

SIR: I have the honor to transmit herewith a detailed statement of the business of the Washington Gaslight Company, with a list of its stockholders, for the year ending December 31, 1908.

JOHN R. MCLEAN,
President.

Hon. JOSEPH G. CANNON,
Speaker of the House of Representatives.

Detailed statement of Washington Gaslight Company, year ending December 31, 1908.

The actual cost to December 31, 1907, of property used in the conduct of the business of the company and the present value of such property are now the subject of judicial investigation by proceedings under existing law in the supreme court of the District of Columbia. As soon as such cost and value shall have been judicially ascertained the company will file a supplemental report stating the same.

Amount of paid-up capital stock	$2,600,000
Amount and character of the indebtedness of the company, 130,000 shares of capital stock, at $20 per share, face value	2,600,000
Dividend certificates of indebtedness	2,600,000
Improvement bonds	598,700

Rate per annum on funded debt, 4 per cent and 6 per cent, averaging 5.625 per cent.

RECEIPTS.

From sales of gas to December 1, 1908	$1,759,786.90	
Good accounts for sales of gas in December, 1908, including arrearages	218,764.79	
		$1,978,551.69
Revenue from sale of by-products:		
Coke	49,548.33	
Tar	14,747.44	
Ammoniacal liquor	5,598.86	
		69,894.63
Use of services		27,300.35
Total receipts from operation		2,075,746.67
Operating expenses (being 60.188 per cent of total receipts from operation), exclusive of interest, dividends, and extension of plant		1,211,167.36
Net earnings from operation		864,579.31
Income from other sources		18,285.00
Gross income after deducting operating expenses		882,864.31
Deductions from income:		
Dividends	260,000.00	
Interest—		
On bonded indebtedness	$179,948.00	
On collateral deposits	6,471.23	
	186,419.23	
		446,419.23
Net income		436,445.08
Taken from surplus		55,829.34
Total net income		492,274.42

Less depreciation account (from which is to be deducted repairs and renewals. See page 3)	$155,887.41	
Extension of plant and construction	323,828.78	
Miscellaneous, as per detailed statement	12,558.23	
		$492,274.42

DETAILED STATEMENT OF OPERATING EXPENSES AND OTHER EXPENDITURES, INCLUDING TAXES, BUT EXCLUDING CAPITAL CHARGES OF ALL KINDS.

	Tons.		
Coal:			
Bituminous	42,129 $\frac{814}{2240}$		
Anthracite	24,615 $\frac{640}{2240}$		
	66,745 $\frac{454}{2240}$	$276,157.43	
Steam	1,139 $\frac{1160}{2240}$	4,226.76	
Oil, 8,323,263 gallons		306,998.17	
Salaries—General office salaries, including law and legal expenses, and to clerks in all departments		162,273.03	
Wages paid to inspectors and miscellaneous labor		125,379.28	
Lime and iron oxide for purifying		7,053.59	
			$882,088.26
Taxes paid collector District of Columbia		111,031.52	
Water rent		2,371.22	
United States inspector gas and meters		4,258.80	
District of Columbia inspector plumbing		961.85	
			118,623.39
Distribution and orders' office:			
Wages and superintendence		49,895.65	
Material, including repairs to street pavements		28,100.26	
			77,995.91
Advertising		9,003.68	
Expense, office		12,861.06	
West station works:			
Wages	$36,094.07		
Material	4,746.08		
		40,840.15	
East station works:			
Wages	19,024.97		
Material	2,495.50		
		21,520.47	
			84,225.36
Insurance			9,034.06
Repairs, general:			
Wages	9,127.16		
Material	17,083.69		
		26,210.85	
Repairs, east station:			
Wages	10,234.79		
Material	4,735.13		
		14,969.92	
Repairs, meters:			
Wages	19,291.41		
Material	3,950.63		
		23,242.04	
Repairs, street mains: Wages, etc		15,316.54	
			79,739.35
Street lamps:			
Wages		7,767.41	
Material		3,578.39	
			11,345.80
Services:			
Wages		14,323.33	
Material		13,531.25	
			27,854.58

Miscellaneous:			
Bills receivable and checks unpaid		$38.59	
Contributions to charitable objects		210.15	
Coke for charity		24.00	
Damages to property		2,642.75	
Employees' Christmas gift		2,410.00	
Goetz, Aug., & Son, moving pipe from vault		89.25	
Meters condemned and destroyed		5,363.61	
Municipal building dedication		100.00	
United States registered 2 per cent bonds		734.38	
Washington Gaslight Company Employees' Relief		945.50	
			$12,558.23
Depreciation and renewal account		155,887.71	
Less repairs:			
General	$26,210.85		
East station	14,969.92		
Meters	23,242.04		
Street mains	15,316.54		
		79,739.35	
			76,148.06
Extension of plant and construction:			
One 2,000,000 cubic feet capacity gas holder		69,970.00	
One condenser and scrubber		16,500.00	
Excavating for new holder		57,000.00	
One set Lowe water gas apparatus		10,000.00	
Two tar extractors		3,000.00	
Heine safety boiler		1,622.50	
One vertical exhauster		1,360.00	
One-third cost new boiler house		559.95	
Steel clamps and I-beams		543.72	
One jet photometer		12.00	
Wages		6,635.88	
Salaries		11,000.00	
Meters		9,374.84	
New gas holder sundries		4,324.99	
Street mains		126,934.78	
Sundries		4,990.12	
			323,828.78
			1,703,441.78
Gas manufactured		cubic feet	2,226,963,000
Less condensation, leakage, and used by company			259,986,252
Gas sold and accounted for			1,966,976,748
Average price received per 1,000 cubic feet sold			$1.05
Average gross cost, exclusive of interest, dividends, and construction account, per 1,000 cubic feet sold			60.186
Average net cost per 1,000 cubic feet sold after deducting from gross cost proceeds of by-products			56.633
Average candle power for year 1908, taken from United States inspector's report			23.28
Total number of consumers' meters in use January 1, 1909			46,644
Actual cost of extensions and construction paid from earnings			$323,828.78
Amount expended for labor			$367,748.07
Amount set aside and paid in interest			$186,419.23
Amount set aside and paid in dividends			$260,000.00
Amount set aside for depreciation, renewals, and repairs			$155,887.41
Number of employees			645
Total number of stockholders			1,119

Appended hereto is a list of the stockholders of this company of record January 15, 1909.

JOHN R. MCLEAN, *President.*

List of shareholders of the Washington Gaslight Company January 15, 1909.

	Shares.
Abeel, Margaret H.	15
Abbott, Katharine K.	6
Aarons, Eva	30
Acklen, Wm. H.	75
Adams, Arabella J.	42
Adams, Martha M.	36
Adams, Lillian B.	9
Adams, Charles L.	9
Adler, Maurice J.	50
Adler, Gertrude H.	9
Addison, Clare G.	45
Ainsworth, Mary, Mrs.	11
Ailes, Milton E.	10
Alsop, Lucy C.	135
Alsop, Aimee E.	33
Alsop, John de Koven	33
Alsop, Francis J. O.	33
Almy, John, J., Admiral U. S. N.	32
Allis, Julia T.	15
Alger, Eunice P., guardian of the domicile in Ohio of Margaret E. Alger, David B. Alger, and Esther M. Alger, minor children of Esther D. Alger, deceased	5
American Security and Trust Company and Alexander T. Britton, executors estate James G. Craighead	6
American Security and Trust Company, trustee under the last will and testament of Clarissa Heiss, deceased	90
American Security and Trust Company, trustee for Lucretia S. Bean	199
American Security and Trust Company, trustee Alexander Graham Bell memorial fund	80
American Security and Trust Company	75
Anderson, Horace	87
Anderson, Julia P.	97
Anderson, M. L.	6
Anderson, Sophie C.	2
Appleman, Rosalee B.	12
Archer, Andrew	235
Armes, Henry B.	100
Ashford, Agnes Amalia, administratrix estate Frederick Ashford, deceased	10
Ashley, Julia E.	15
Atkins, Cornelia Lee	4
Atwood, Annie Y.	100
Auld, Susanna K.	39
Bailey, Charles B.	75
Baily, Howard H.	13
Baer, Benoit, jr	25
Ballbach, Margaretha	12
Ballbach, Margaret	52
Balch, Emily Swift	118
Banes, Albert	3
Barbour, James F.	566
Barbour, Annie V.	477
Bartol, George E., trustee under will of Mary Grier Bartol	18
Barrett, Fannie J.	302
Barr, Ann Jane	127
Barclay, Henrietta Chauncey	208
Barker, Wm. E.	200
Barnum, William	200
Bartol, Jane Grier	27
Barnum, Mary C.	10
Bates, James L.	1
Bauer, Emma M.	65
Bauer, Emma M., guardian to Elsie Bauer	63
Bauer, Emelia S.	34
Baum, William	20
Bayard, M. W. C.	25
Bell, Hugh	70
Bell, Isabella	205
Bell, Harriet G.	140
Bell, Charles J., and James Rudolph Garfield, trustees under clause four of the will of Jean M. D. Lander	5
Beale, Truxtun, trustee for the estate of Mary E. Beale	111
Beard, Martha A.	219
Beavens, Mary Corinne	105
Belt, Elizabeth Q.	133
Behrend, Salm	60
Beal, Ida DeFord	100
Benners, A. Eugene	231
Benners, W. J. (2d)	53
Benners, Henry H.	231
Benners, William J.	178
Benners, Helen M.	173
Benton, Mary M.	25
Bestor, Selina, Mrs.	475
Bestor, Norman	125
Besson, Josephine Louise	2
Belt, Amelia M.	14
Bell, Charles	20
Bird, Caroline W.	8
Bigelow, Mary DeFord	100
Blackfan, Emily E.	20
Blair, Woodbury, trustee	50
Blair, Henry P.	100
Blair, Woodbury, trustee for Virginia W. Lowery Brunetti	300
Boardman, Albert B.	79
Bolling, Eleanor Lutz	26
Bowe, William	33
Boyd, Anna G.	28
Boyd, Ida C.	65
Boyd, Ida C., Mrs.	55
Boyd, Kate Willard	1,038
Boyd, Elsie M.	65
Bostwick, Emilie D.	16
Brazier, Ellen K.	25
Bradford, Mrs. L. A.	40
Bradley, J. H.	500
Brennon, John C.	32
Brengle, Henry G.	50
Brengle, Rosalie L.	50

	Shares.
Brengle, Laurence J	50
Brick, Joseph K	11
Bringhurst, William Joseph	18
Brice, Jane F	15
Bright, Robert S., trustee (by appointment of orphans' court of Philadelphia) under will of Emma L. Breese	70
Brown, Annie T	7
Brown, S. Thomas	250
Brown, William V. H	501
Brown, Adeline P	50
Brown, Adelaide J	1,400
Brown, Charles W	15
Brown, Stephen C	30
Brown, Adelaide H	29
Brown, Jno. A. S., trustee under the will of Lucien Brown, deceased	293
Browne, Alice Key	450
Brunetti, Virginia W. Lowery	430
Bryan, Brantz	1
Bryan, Joseph H	9
Bryan, Marian	49
Bryan, Elizabeth E	2
De Bryas, Rose Clymer	45
Buckley, Edward S	68
Buckley, Mary Vaux	130
Buchanan, Roberdean	3
Budin, Berthe	5
Buehler, Caroline Rogers	42
Bullock, Francois Z. H	500
Bulkley, J. W., Dr	13
Bulkley, Virginia	337
Bulkley, Virginia, or J. W	250
Bullitt, John C	504
Burr, Mary C	204
Burr, Margaret A	5
Burdette, Alice Cary	10
Burgess, Wilhelmina F	10
Bush, Mary H. J	55
Butterfield, John W	110
Butler, W. K	25
Butler, Marion	100
Campbell, Shiras	191
Campbell, B. H	247
Campbell, H. A	10
Cammack, Elizabeth May, and Henry H. Flather, executors estate of John Cammack, deceased	224
Cammack, Lizzie May	1,042
Cammack, John Edmund	30
Cahill, James A	100
Carter, Aaron, jr	1,000
Carter, Wm. P	7
Carr, Wm. K	20
Carpenter, Mrs. E. M	1
Carpenter, Elizabeth P. E	25
Carpenter, Charlotte F	5
Casilear, George W	25
Cashman, Mary	6
Caspari, John	75
Cassin, Fannie M	13
Cassin, Genevieve	2
Cassin, Mary A	7
Cassin, Mary M	4
Cassin, William D	2
Chapin, Mary L	62
Chambers, Lily K., Mrs	11
Chambers, Tileston F	34
Chamberlin, Mrs. Julie F	15
Charles, Mrs. Elizabeth G	10
Chapman, Alfred	3
Chery, Wm. L	40
Chery, Clara Grace	75
Church, W. A. H	64
Chipmen, G. B., & Co	1,533
Clagett, Chas. W	2
Clark, Margaret H	130
Clark, Addie Burr	66
Clark, Eveline F	5
Clark, Watson F	1
Clark, Mary A	38
Clark, Mary F	5
Clark, S. Frances	100
Clark, Anna Scott	25
Clarke, Anthony J	25
Clarke, L. A	100
Cleary, Patrick	6
Coblenzer, Bertha	15
Collins, Mattie L	10
Coldren, F. G	15
Coleman, Mary A	3
Collamer, Ida F	28
Colston, Alice A	10
Coleman, Mary Ella	25
Colegate, Harriet L	159
Commonwealth Title Insurance and Trust Company—	
Trustee for Edward Overton Ward, under will of Louise Ward, deceased	5
Trustee for Louise Van Loon Lynch, under will of Louise Ward, deceased	5
Trustee for Thomas Clymer Ward, under will of Louise Ward, deceased	5
Connelly, Harry	6
Connelly, Sarah Vaux	211
Connor, H. W. B	18
Connor, John	90
Conradis, A. Minnie	10
Continental Trust Company (The), substituted trustee under the will of Amanda Z. Howard	130
Cooke, James W., sole trustee	83
Cookman, Margaret H	2
Coppes, A. B	700
Coombs, William D. H	12
Coombs, W. D	16
Corcoran, Anne D	82
Cosby, Charlotte M	15
Coyle, Fitzhugh	34
Coyle, Mary A	50
Coyle, Cornelia L	287
Coyle, Emily B	286
Coyle, Leonidas E	453

	Shares.
Cox, John C	57
Craig, John, estate of	13
Craig, Annie B. M., trustee	728
Craighead, Mrs. H. V. A	20
Craighead, Alice W	16
Crane, Parris & Co	25
Crawford, Edgar W	10
Croft, Miss C. M	1
Cromwell, William Nelson, trustee for Annie M. Barbour	14
Cross, Annie G	5
Crossfield, Eloise	3
Crossfield, Daisy M	3
Cunningham, Louis	250
Culverwell, William B	2
Dale, Margaret (widow)	10
Daniels, Clara H	50
Day, Rosalie S	65
Denis, Emma L	298
Denis, N. R	962
Denham, Sarah A	136
De Caindry, Ida Corson	30
De Ford, Lydia H	50
De Ford, Lydia M. H	20
De Ford, Nancy H. H	20
De Forest, Zilpha C., executrix under will of Anna M. De Forest	67
Dennison, Margaret L. S	105
Dewey, M	175
Dewey, Lizzie	8
Dickson, Henry	1,000
Diederich, E. H	11
Dinwiddie, Cora L	5
Dodge, Helena S	40
Donnelly, Emma H	5
Donovan, J. E	10
Dorsey, Ada	45
Doughty, Wm. Howard	260
Douglas, Julia C	75
Downs, Rosa A	5
Dreifus, Hedwig Henle	20
Drexel & Co	100
Droop, Edward H	20
Duiwiddie, Florence C	2
Duiwiddie, Marion L	2
Dulany, Anne Willing Carter	1
Dulany, Thomas Carter	2
Duncan, Henry B	38
Duncan, Henry B., trustee for Elizabeth Duncan	74
Dunlop, George T	50
Dure, Henry F	36
Durkee, Margaret W	130
Eaton, Wm. F	33
Eaton, Emma, Mrs	4
Eatman, William	8
Easterday, George J	25
Eastman, Lottie P	59
Edwards, Annie L	20
Edwards, Daniel	100
Edwards, Florence E	51
Edes Home	146
Egloff, Julius	15
Elliott, Jane	32
Elliott, Maria B	50
Elliott, Mary Lavinia	10
Elliot, Chas. H	15
Emmert, Louise M	20
Emerson, Kate Paulding	7
Emerson, Sarah H	50
Emery, Amanda	75
Ennis, Clara C	70
Everett, Katharine	21
Eversfield, Joanna T	21
Ewing, Laura C	25
Exel, Emma E	20
Favier, Teresa	26
Fahnestock, Caroline, Mrs	22
Farrell, Emily C	6
Falvey, M. J	135
Fearson, W. P	10
Ferguson, Susan B	207
Felt, Caroline E	1
Ferneyhough, Edward	5
Fidelity Insurance, Trust and Safe Deposit Co.—	
Trustee under will of George Maulsby, dec'd	200
Trustee under will of Anna M. Maulsby	420
Trustee for Marie E. H. Denis.	300
Trustee under deed of Caroline deB. Levett	26
Trustee under deed of Charlotte Bostwick (No. 2)	226
Trustee under deed of John C. Bullitt	200
Trustee for Mrs. Carlene A. Way, under will of John H. Dohnert, dec'd	533
Fidelity Trust Co., trustee for Ethelrea B. Crosman and Alexander F. Crosman	38
Fidelity Trust Co. and B. P. Hutchinson, trustees under the will of M. P. Hutchinson, dec'd.	221
Fisher, Ellen P	28
Fisher, A. A	125
Finerty, Mary	5
Finerty, William J	23
Finnerty, Mary	11
Fisk, Elizabeth C	4
Fiske, Charles H	65
Fitler, Frederika C	50
Fleming, Grace	7
Fleming, Isabella	43
Flather, Henry H	50
Flather, William J	4
Fogle, Annie	1
Fontaine, Elizabeth C	51
Fowler, Charles D., and Willis Fowler, trustees under an instrument dated June 9, 1904, or the survivor	25
Fox, Elmund K	100
Foster, Warren W	50
Francis, Lavinia C	198
Frailey, Helen W	45
Frailey, Caroline L	55
Frailey, Leonard A	10

	Shares.
Franklin Insurance Co	39
Franklin, Mary C. S	100
Fraser, Daniel	950
Freeman, Mary E	66
Freeman, Louisa A	45
Freeman, Evelyn F	5
Freeman, William C	901
Free, Fannie	44
Frothingham, Lucy S	99
Frye, Stella M	3
Gaegler, Anthony	236
Gaillard, D. D	20
Gailloway, Mary R	260
Gartrell, E. M	66
Gardner, Eliza C	25
Garland, Emily H	5
Garland, Hattie M	1
Gaver, Clayton D	3
Gawler, Joseph, jr	16
Galt, Emma	5
De Geofroy, George Louis Dominique Antoine	23
De Geofroy, George	25
Getty, Cornelia T	159
Gibson, Robert	13
Gobson, William H	20
Gibson, Ruth A	30
Gillespie, Geo. Cuthbert	26
Gillespie, Elizabeth C	26
Gibbons, Mary Ann	227
Gibbs, James T	2
Gieseking, William A	60
Gilbert, Aimee E. A	172
Gilmore, Estelle M	100
Gieseking, Lizzie C	15
Girard Life Insurance, Annuity and Trust Co., trustee under will Jas. Somers Smith, dec'd	33
Girard Trust Co., guardian of estate of Daniel T. Beers, minor	33
Goddard, Martha W	100
Goodloe, Green Clay	6
Gordon, Mary T. G	11
Gordon, Ellen	20
Gordon, William A., and J. Holdsworth Gordon, trustees under the will of Osceola C. Green, dec'd.	150
Goldsborough, R. H	500
Greir, James	2
Griffin, Eleanor H	145
Grimes, Elizabeth	25
Gribbel, John	41
Grunwell, A. B	136
Gray, Charles B	500
Gray, G. W	225
Grant, Thomas	125
Griffith, Marnie V	115
Greenough, William B., trustee under the will of Clara A. Hoppin	239
Green, James M	500
Guthrie, George W., testamentary trustee	130
Guarantee Trust and Safe Deposit Co., trustee for Mary E. Douglass.	15
Executor of will of Charles Ridgway	71
Guerry, Homer	55
Gwynn, William C	100
Hacker, Sarah E	40
Hahn, Morris	7
Hall, Mary Anna	15
Hall, Thomas H	25
Hall, G. Abeel	10
Hall, Katharine J	10
Hall, Fanny S. H	12
Haller, William	10
Halderman, John A	50
Halstead, Griffin	25
Hammond, Edward A	300
Hammond, Eliza	15
Hambleton, Theodosia L	37
Hammett, Charles M	50
Hancock, Sallie G., Mrs	3
Hare, Eleanor A	65
Hare, Eleanor A., and Louisa D. Lovett, trustees	117
Harvey, Alexander E	400
Harvey, Sarah	45
Harrison, Burr Powell	40
Harrison, Ellen W., Mrs	85
Harper, Anna C	287
Hartwig, Frieda	13
Harkness, Margaret G	23
Harkness, Cecilia R	24
Harkness, Jane	22
Harkness, David W	22
Harrison, Charles F	25
Harper, Robert N	25
Harrison, B. P	50
Harrison, B. Powell	35
Harrison, S. B	20
Haviland, Mary E., guardian of Gertrude R. Zane	48
Heberton, Craig	72
Heffernan, Chas. A	20
Heard, Eliza B	50
Heiskell, Hester	50
Heiskell, Sarah Finotti	50
Hempstone, Elsie C	3
Henry, Mary	27
Henry, J. Norman	54
Henry, Allan J	29
Henderson, Grace M	30
Henderson, Mary G	10
Hendrick, J. T	1,078
Herold, Margaret	8
Heywood, Caroline, Mrs	11
Hibbs, W. B., & Co	336
Hill, Nora M	100
Hicks, Webster M	10
Hitz, Jane C	225
Hitz, William	208
Hoffman, Mary F	100
Hollingsworth, Amor	154
Hollingsworth, Valentine	54

	Shares.
Hollingsworth, Valentine, of Cohasset, Mass	100
Holton, Frederick A	3
Holbrook, Lillie B	13
Holmes, Lucy B	4
Holland House Co. (The), of New York	200
Holder, Emma	15
Hopfenmaier, Lewis	8
Hopfenmaier, Babette	1
Hopfenmaier, Sara F	4
Hoppin, Charles A	249
Hosley, Genevieve	16
Howland, Rachel S	2
Howland, Susan	3
Hough, Nettie G	200
Howard, Helen A	13
Howard, Cecilia	200
Howard, George	200
Howland, Charles S	3
Howell, Sarah B	18
Howell, Mary Eyre	308
Humphreys, Catharine M	10
Huber, James	10
Humphreys & Glasgow	50
Hume, Thomas L	1,285
Hurlbut, C. Louise	150
Hurlbut, May V	75
Hurlbut, Grace L	75
Hutchinson, B. P	668
Hutchinson, John P	120
Huyck, Thomas B	20
Hyde, Thomas	200
Ingham, William A., Mary Anna Hall, and John A. Hall, trustees of Elizabeth C. Fisk	11
Ingham, Catherine K	15
Ingersoll, Charles Edward, trustee for Meta de Diesbach under the will of Alexander Wilcocks, deceased	488
Irwin, Bertha F	20
Jackson, Harry	429
Jackson, Ella Willing	78
Jackson, Lucy A	44
Jackson, Delia S	25
Jackson, W. Bladen	140
Jackson, B. Lowndes	7
Jackson, Morie Westheimer	2
Jackson, Willard C	429
James, C. A	250
James, Matilda	130
James, Elizabeth F	130
James, Laura	207
James, Alice	207
James, Marion	207
James, Daniel	207
James, Clifford	199
Janney, Emma, as legatee for life under provisions of will of Anna Janney, dec'd	520
Javins, Isabella, Mrs	65
Johnston, Eliza E	11
Johnston, George J	100
Johnson, Catherine V	12
Johnson, O. H. P	200
Joline, Adrian H., executor of Mary H. Joline	132
Johnson, Wm. K	100
Johnson, Loren B. T	50
Johnson, Grace G	7
Johnson, Lewis, & Co	310
Jones, Annie C	40
Jones, Thaddeus M	100
Jones, T. M	122
Jones, Fannie Lee	112
Jones, Emma Culver	3
Jones, Henry C	50
Joseph, Philip	30
Kane, Ellen	23
Kauffman, Victor	50
Kann, S., Sons & Co	50
Kelly, Abby F. B., Mrs	70
Kelly, Cornelia T	15
Keliher, James A	61
Keliher, Thomas F	161
Keliher, Mary E	71
Keliher, Annie C	71
Keliher, Margaret J	90
Keliher, Honorah	25
Kennedy, Wm. R	10
Kennedy, Frank B., guardian for Katheryn Vivian Kennedy	14
Kennedy, Katherine W	5
Kenyon, J. Miller	105
Keough, James	10
Keyworth, Annie V., Mrs	371
Keyser, Esther A	250
Keck, William W	150
Killmon, Clara S	10
Kimball, Ephraim G	15
King, James W	20
Kirkland, Rosalie Wilson	93
Knickerbacker, John	100
Knickerbacker, Thomas A	100
Knox, Helen T	185
Knox, Lizzie E	20
Knox, J. H. M., jr	7
Koones, Albert L., and Inez B., or the survivor	62
Koppe, Alfred Richard	29
Koones, Victorine	5
Koones, Mary Elizabeth	8
Kraak, Henry	13
Krichelt, F. W	65
Krichelt, Margaret E	10
Kurtz, Annie M	5
La Farge, Margaret M	313
Lambert, Bessie G	50
Lambert, Avarilla	35
Lambert, Wilton J	55
Lammond, Mary V	1
Lathrop, Emma G	43
Lavin, Mary	19
Lawless, Louisa L	200
Lawton, E. M. C. A., Mrs	78
Lee, Mary L	50
Lee, Clarence W	70

	Shares.
Lee, John W	1,000
Lee, Ernest C	4
Lee, Henry	8
Lee, Nellie C	16
Lee, Sarah J	3
Leiter, Mary T	5,000
Leiter, the trustees under the last will and testament of L. Z., dec'd	10
Lenman, Jeannette R	550
Lenman, Isobel H	431
Leffingwell, Catherine B	130
Leffingwell, Catherine B. A	42
Leonard, W. A	65
Leonard, Elizabeth A	5
Lewis, Laurence	780
Lewis, Annie H	20
Lewis, Elizabeth S	10
Lichenstein, Nellie	25
Liebig, Ann Mary	1
Lindsley, Emily V	217
Lloyd, Mary N	21
Lloyd, Elizabeth H	22
Loeffler, Mary M	100
Logan, Mary S	22
Lotz, Emma M	27
Louise Home, Trustees of the	304
Lourey, Anna M., executrix of estate of Mary W. Loury	1
Lovett, Louisa D	16
Love, Belle	100
Ludlow, M. M	393
Lutz, Clara A	26
Lutz, Mary E	26
Lutz, Marion V	26
Lutz, Gertrude	26
Mackall, Louis	101
Mackall, Louis, jr	10
Mackall, Sarah S	10
Macfarlane, Edward O	15
Macafee, Burton	26
MacNab, John F	25
MacBride, William C	240
Maddox, Samuel, and Arthur T. Brice—	
Trustee for Hattie McC. Werlich	593
Trustee for Mary E. McCeney.	595
Madeira, Albert P	100
Magee, James	1,083
Magruder, C. M., Miss	67
Mahan, Irene L	11
Major, Mary E	5
Mann, Hannah N	75
Mann, Mary S	200
Malone, A. E	145
Mannix, Ella S	280
Marston, A. J., and Etta L	43
Marsh, Albert F	300
Mason, T. S	250
Mather, Mary H. Askew	34
Mattingly, William F	100
Maxwell, Mary D	14
Mayer, Lazarus	572
Maynard, Effingham	65
May, Frank P	40
Mearns, Mary Chambers	5
Meek, Charlotte E	125
Meem, Harry G	45
Merrick, Wm. H	33
Merrick, J. Hartley	16
Merrill, Charlotte	50
Messenger, Bernard F	5
Merrill, Cora E	16
Metzger, M. C	16
Metzger, Mary C	2
Middleton, M. Virginia	52
Middleton, Robert L	5
Middlekauff, N. I	130
Miller, Emma S	3
Miller, Annie May	20
Miller, Villa M	10
Mills, Dolly De Wolfe	5
Minnick, Agnes L	5
Mole, Amelia C	20
Moore, J. H	25
Moore, Frederic L	75
Moore, Orra C	20
Moore, E. J., & Co	26
Moores, Edward S	100
Morton, Alice E	42
Morton, Adeline	7
Morehead, Kate Upshur	138
Morrill, James S	50
Moorhead, Kate Upshur	16
Moorhead, John Upshur	2
Morris, Violet Willing	33
Moorhead, J. Upshur	19
Morgan, James D	10
Morrill, Mary Hunt	16
Mosher, Augusta McBlair	159
Moss, G. W	400
Moss, Gertrude B	30
Muir, Susan S	25
Muller, Harry C	27
Mulcare, Jas. E	11
Mulcare, Rosa May	3
Munn, H. B	40
Murray, Susan E	30
Myers, Fannie I	26
Myers, Anna T	2
McCall, Phebe W. I	290
McCawley, Charles L	20
McCawley, William M	32
McCarthy, Daniel P	150
McCeney, Mary E	153
McChesney, Agnes A	16
McClary, William J	910
McClery, Elizabeth H	26
McCormick, Clara K	3
McCormick, Eliza	5
McCurdy, Augusta G	8
McDonough, Maria	50
McFarlan, Daniel	5
McGuire, Sara J	100
McIlhenny, Thyrza V	9
McIlhenny, John	400
McIlhenny, John D	100
McIntire, Mathilde	10

	Shares.
McKeever, Helen C	9
McKeever, Elsie M	9
McKenney, Wm. A	30
McKelden, Emma	10
McKnew, Ida H	50
McLaughlin, Josephine	12
McLean, J. R	288
McLean, Edward B	6
McQuade, E. J	95
McReynolds, F. W	500
National Safe Deposit, Savings and Trust Company of the District of Columbia—	
Trustee under will of Benjamin P. Snyder	270
Trusee for Katherine Colegate.	136
Trustee in equity No. 26094 for Alice A. McLeod	26
Trustee in equity No. 26094 for Ida S. Wilcox	26
National Savings and Trust Co., trustee of the residuary estate of A. P. Gorman, deceased	1,350
Nagle, Levi	4
Neelesville and Darnestown Presbyterian Church of Montgomery County, Md., trustees of the	400
Nesmith, Mary E	43
Neurath, Josephine	20
Nevins, Sarah	10
Nisbet, Elizabeth S	280
Noble, Irene H	36
Noyes, Georgie E	16
Noyes, Elizabeth S., and Theodore W. Noyes, trustees under will of Crosby S. Noyes	300
Norton, Eliza M	42
Nordlinger, Isaac B	18
Oberly, Eunice R	3
Oberly, Ruth M	2
O'Dowd, Margaret	117
Oeston, Agata D. M	9
O'Donnell, James	100
Oettinger, Bertha	5
O'Hare, Owen	300
Olds, Edson B	25
O'Meara, William C	321
O'Neill, Alice	15
Orme, Ella	681
Orme, William B., and Charles B. Bailey, trustees under the will of James W. Orme—	
For Charles H. Orme	142
For Edgar J. Orme	142
For Gardner P. Orme	142
Orme, William	142
Orme, Harry	141
Orme, James	142
Orth, Henry	295
Orth, Henry, jr	17
Orth, Carrie S	3
Orth, Caroline	6
Osterman, Rose A	15
Overacker, C. M	4
Owens, Laura A., Miss	30
Parnell, R. M	24
Parker, Louise Frances Adele	5
Parker, W. W. W	75
Patten, William T	59
Patten, Hudson T	59
Patten, George F	59
Patten, Christine	58
Patterson, Eleanora Willing	33
Paulding, Helen J	48
Pennsylvania Company for Insurance on Lives and Granting Annuities—	
Trustee for Samuel R. Brick, jr.	8
Trustee for Harry C. Brick	3
Trustee for Matilda Eberheart, Fannie E. Cassiday, and Alfrida D. Winner	32
Trustee for Fannie Parker	3
Trustee for Emma Stork	300
Trustee for Sarah J. Elliott	325
Trustee for Mary Vaux Buckley	68
Trustee for Sarah Vaux Connelly	52
Trustee for E. L. Kintzing	23
Trustee under will T. D. Nancrede	334
Trustee for Mary S. McKay	164
Trustee for Sarah S. Zulich	68
Trustee under will William Whitney Heberton, dec'd	18
Pearson, Charles B	100
Pennie, Alida Y	27
Pepper, Chas. M	5
Pepper, C. M	25
Peirce, George	96
Peirce, George, trustee for O. Roberta George	71
For Mrs. Ellen M. Emlen	70
Of Praul estate	36
For Ellen M. Emlen	42
Peirce, Lucy S	184
Pearson, Annie	2
Peabody Library Association of Georgetown, D. C	77
Peak, Louis R	10
Pepper, Frances S	156
Perry, Amanda E	32
Perry, Miss M. E	1
Perry, R. Ross	125
Perry, R. Ross, jr	107
Perry, Thomas Sergeant	309
Perry, Oliver Hazard	306
Peters, Eugene	25
Philadelphia Trust, Safe Deposit and Insurance Co., trustee under will of Newberry A. Smith, deceased	300
Phillips, Samuel L	65
Phillips, Samuel L., and Samuel L. Phillips, trustee under will of George W. Phillips	162
Pilling, Elizabeth	8

	Shares.
Pilling, Fred W	105
Platt, Lester B	25
Plant, Arthur G	85
Polkinhorn, Catharine E	36
Polkinhorn, Hannah E	44
Polkinhorn, Rachel A	22
Poole, Cordelle O	15
Poole, Mary W	100
Powell, Annie L	25
Power, Mary A	120
Porter, Mary Ann	85
Porter, Mary A	50
Porter, Frederick E	100
Porter, Carrie E	12
Potts, Elizabeth H	9
Powell, J. L., jr	1
Provident Life and Trust Co., of Philadelphia—	
Trustee for Rebecca McM. Waln	52
Trustee of E. N. Waln (now Graham)	52
Preston, Ord	100
Preston, Mary Ord	6,000
Prevost, Caroline L	22
Price, Martha H	167
Protestant Episcopal Church in the Diocese of Pennsylvania, trustees of the	25
Pursell, C. C	55
Pursell, Cornelia A	44
Quicksall, W. F	222
Quinter, W. D	25
Quigley, Richard L	50
Rand, Susan L. F	6
Randle, Harriet S	20
Ravenel, W. deC	20
Rawles, Gertrude H. W., Mrs	5
Rawlings, Frank T., trustee for C. M. Ray	3
Ray, Amanda J	200
Ray, James	735
Redfern, Mary E	50
Redfern, Jane F	15
Read, F. P. Blair	35
Reed, John A	50
Reed, A. V	5
Reid, Margaret A	75
Real Estate Trust Co. (The), of Philadelphia, and Henry G. Brengle, trustees under will of Millicent A. Gaw, dec'd	414
Reeside, Howard S	25
Reilly, Alice Margaret	39
Rice, Caroline K	5
Richardson, F. A., trustee Mary M. Adams	150
Richardson, Chas. W	140
Richardson, Mary A	48
Ridgway, Anna T	72
Riley, Louisa, Mrs	7
Riley, William R	538
Riley, William R., trustee	13
Riley, Mary A	5
Robinson, Rosa A	11
Robinson, J. B	30
Robinson, William T	216
Robinson, Anthony W	216
Robinson, Jerome B	10
Rocca, Paulina	100
Rodman, Deborah K	216
Rogers, Minnie B., and John L., trustees	349
Rogers, Mary	42
Rogers, A. H	2
Rosengarten, George D	3,640
Ross, Emily H	20
Ross, Elizabeth	20
Ross, Wilbur F	5
Rowan, Hamilton	65
Ruff, A. B	50
Russell, Chas. H	16
Russell, Julia C	7
Russell, Emma L	19
Rutherford, Sophia L	17
Samson, Marianne	17
Sampson, Ellen P	5
Sargent, Sarah H	170
Saul, John A	90
Savage, Henry Chauncey	208
Savage, Albert Lyttleton	207
Savage, William Lyttleton	225
Savage, Charles Chauncey	224
Saville, James H	30
Saville, Catherine	10
Sawyer, Eunice B	66
Sawyer, Alice E	14
Scanlan, D. F	50
Schafer, George F	163
Schafer, Minnie, Mrs	131
Schafer, Mary C	10
Scheller, Thomas K	65
Schermerhorn, Clara	26
Schermerhorn, Frank E., trustee for Clara Schermerhorn under will of Thos. Cunningham, deceased	146
Schermerhorn, Clara, trustee for Delia E. Van Kleeck under will of Thos. Cunningham, deceased	147
Schley, Florence W., Mrs	26
Schmidt, Mattie L	6
Scheele, Geo. A	25
Scott, Martha H	75
Scott, W. O. N	100
Sears, Jessie A	6
Security Trust and Safe Deposit Co., trustee of Wilmington Monthly Meeting of Friends	41
Seebold, Charles P	5
Seymour, Virginia C	13
Shafer, Mary N	220
Sharpless, Samuel J	119
Shaw, Edward	90
Shea, John F	700
Shea, D. C	50
Sheridan, Henry C	20

	Shares.
Shippen, Elizabeth S	118
Shippen, Samuel S	118
Shields, Chas. A	75
Shuler, Esther Lena	2
Sibley, Katharine W., and Alexandrine H. Sibley	130
Sickels, Antonia P	185
Simon, Deborah	7
Simon, James H	4
Sinclair, Caroline C	38
Sinnickson, Charles P	195
Sinnickson, Frances F	78
Sioussa, Mary	20
Sisler, J. Davis	20
Siter, Susan H	352
Skinner, Parmenas, jr., and Louisa L. Lawless, trustees for Fannie M. Dunbar	190
Slade, Anne A. H	10
Slater, Enid Hunt	396
Small, John H., jr	10
Small, Miriam E	13
Small, Samuel	400
Small, Philip A., of York, Pa	100
Smith, Joseph H	138
Smith, Augustus	65
Smith, Laura J. P	128
Smith, Anna M	75
Smith, Eliza A	6
Smith, Joshua E., trustee for Susan H. Siter	109
Smith, Herbert Stanley	52
Smith, Rosa Wright	92
Smith, Carrie E	40
Smith, Wm. H	40
Smith, Laura Jane	17
Smoot, Georgie W	35
Smoot, Jane M	5
Snyder, Anne C	62
Solger, Florence K	31
Solger, Florence B	4
Sondheimer, J	50
Soule, Helen French	10
Spencer, Mary A	100
Spotswood, Susan B	253
Spotswood, Annie R	272
Spottswood, Kate M	15
Spransy, E. Slater	50
Spencer, Trask & Co	65
Spruance, M. Louisa	209
Spurgeon, W. P	50
Stafford, D. J	26
Stead, Robert	17
Stelle, Jane M	30
Stephenson, Rose H	5
Stevens, Ella	4
Stevens, Mena M	30
Stewart, Clara E	437
Stewart, Elizabeth S	211
Stewart, H. Clay, jr	15
Stewart, Anna P	6
Stewart, Mary	10
Stewart, Henry C	15
Stewart, Thomas S	434
Stewart, Ralph C	434
Stinson, M. V	50
Stockdale, Emily A	10
Stoner, Elizabeth	32
Stone, Sarah P	10
Stork, Emma	90
Storrow, R. J., Mrs	134
Story, Myron L	80
Story, Frances L. C	43
Stowell, Wallace McK	10
Stockslager, Strouth M	10
Strong, Annie W. S	17
Sullivan, Thomas B	50
Sullivan, W. D	150
Sullivan, John	10
Sutter, Cynthia S	112
Swift, Carrie C	51
Swift, Elizabeth	136
Swope, John A	50
Symonds, Louisa, Miss	58
Symonds, Mary, Miss	58
Tabler, Elizabeth D	15
Taggart, Elizabeth R	6
Talcott, Mary G	12
Tanner, Helen J	208
Taylor, Emily V	262
Taylor, Hudson L	274
Taylor, Emily	12
Taylor, Beatrice H	2
Tayloe, Mary Lomax	525
Tayloe, Edward Dickinson	525
Thomas, Caroline	500
Thomas, Caroline, and George C. Thomas, executors of the estate of George C. Thomas, deceased	814
Thompson, Virginia	50
Thompson, Theresa	75
Thompson, Grace	100
Thompson, Josephine K	44
Thompson, Henry C	20
Thompson, Blanche N	9
Thompson, H. Clay, jr	8
Thomson, Annette M	25
Thom, Corcoran	535
Thornton, Mary C	47
Tilley, Stephen B	15
Tolson. M. Aline	19
Tompkins, Hamilton B., trustee under the will of Louis F. Gray	30
Torrey, Mary C	14
Torrey, Ellen C	14
Torrey, Mary C., and Ellen C. Torrey	10
Townsend, Susan S	130
Towson, Blanche K	2
Townsend, Mary S	17
Towles, Henry O	5
Tracy, Sarah P., Mrs	12
Trumbull, Marian	12
Train, Errol Cuthbert	10
Tucker & Kenyon	15
Tucker, Mary Logan	8
Tulloch, Ethel E	2
Tulloch, Marjorie	2

	Shares.
Tulloch, Helen M	2
Tupper, J. B. T	15
Turner, Jesse	600
Turner, Jesse, estate of, deceased	60
Turner, W. W	60
Turner, Matilda, Mrs	16
Turpin, Mary Lamar	4
Turpin, Perry B	25
Turpin, Sallie H	10
Tuthill, Chas. H	19
United Securities Co. of Delaware	50
Union Trust Co. (The) (Philadelphia, Pa.)	14
Vail, Frances H	360
Vale, J. M	65
Van Reypen, Wm. K	135
Van Reypen, Nellie C	10
Van Vliet, Emma W	5
Van Wyck, Geo. P	10
Van Wyck, Octave B	5
Vaux, Bessie W	68
Vaux, Elizabeth Waln	150
Vaux, Emily Norris	109
Vaux, Meta	288
Venn, Maria Garnett	63
Vinson, Nannie S	148
Vinson, Robert W	45
Wall, Margaret J	4
Wallace, Ellen Rebecca	50
Wallace, E. R., Mrs	20
Wallace, F. R	16
Wallace, Frederick R	5
Waln, Ellen C	104
Waln, Sally M	104
Waln, Sally Morris	35
Walters, Anna K	10
Walters, Bestor B	10
Ward, William J	40
Washington Loan and Trust Co.—	
Trustee estate of William H. Butler	50
Trustee estate of W. F. Eaton	5
Trustee estate of Austin Drake	3
Trustee of the heirs of Edward Clark	7
Washington City Protestant Orphan Asylum	46
Watson, Rose K	15
Watmough, James H	300
Way, George P	160
Way, Carlene A	347
Wayne, Frances C	14
Wayne, Emma M	30
Weakley, C. A	25
Weaver, Robert D	366
Weaver, Henry E	166
Weaver, William M	66
Weaver, Joseph T	166
Weaver, Mary A. R	100
Wead, Eunice	30
Weld, Margaret	10
Welsh, Virginia Cartwright	348
West, Sara	2
West, A. C	
Wetzel, Wilhelmina C., trustee under will of W. H. Wetzel, dec'd	
Wetzel, Cora	
Wetzel, William H	
Wex, Emma J	
Wheatley, Minnie D	
Whalen, Charles E	
White, Francis P	
White, Charles E	
White, Lalla B	
White, Eugene R	
Whiting, Guy F	
Whiting, Alice V. D., jr	
Whiting, Alice V. D	
Whiting, Guy Fairfax	20
Whiting, C. M. L	15
Whiting, George W. W., trustee for Anna W. Tarbell	5
Whitten, Newton	75
Whittlesey, Mary	170
Whittlesey, Helen D	170
Whitwell, Margaret M	10
Whitwell, Sanford N	275
Whitwell, Louise F	3
Wight, Anna C	61
Wilcox, Mary J	14
Wilcoxon, Mary C	10
Wilkes, Eliza	4
Wilkinson, James	150
Wilkins, Robert C	50
Willard, Henry A	201
Willard, Helen Parker	8
Willard, Sarah Bradley	100
Willard, Lucy Parker	1,122
Williams, Charles P	1,700
Williams, Mary V	16
Williams, Campbell Riley	1
Williams, Mary E	15
Wilson, Nina E	1
Wilson, Louisa	25
Wilson, Jesse B	50
Wilson, Annie A	1
Windsor, James S	25
Wingate, Ella B	2
Wood, H. C., Dr	80
Wood, Virginia Niles	35
Woodbury, Henry E	164
Woodbury, E. C. de Q	70
Woodin, Nettie C	42
Woodin, Antoinette C	9
Woodward, A. W	15
Woodward, William C	10
Woodruff, Henrietta C	314
Woodworth, M	161
Wormley, Susan E	3
Wright, J. G	200
Yarnall, J. H	176
Young, Miss Sarah C	10
Young, Emma J	10
Zane, Annie M	48
Zane, Anna	49

(The committee, at 12.10 o'clock p. m., adjourned.)